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ABSTRACT

This monograph in the Urban Diversity Series examines historical and current policy in the teaching of language minority students in New York and California. It explores the key issues in the public's understanding of bilingual education and defines bilingual education in terms of local educational legislation and implementations. Part I, "Teaching Language Minorities: Theory and Reality in New York City," discusses the history of bilingual education programs in New York City public schools and the theories that frame bilingual education policy. Using data from the New York City Department of Education (formerly, the Board of Education), it presents information on English Language Learner (ELL) enrollment from 1987 to 2002 and New York City and New York State standards for classifying students as Limited English Proficient or English Language Learners. The paper also analyzes the effectiveness of the bilingual education program in terms of reclassification rates of ELLs and general student achievement. Part II, "Dismantling Bilingual Education: The Impact of Proposition 227 in California," analyzes the implementation of Proposition 227 in California and its outcomes. The paper looks specifically at: 1) California law on instruction for English Learners before and after Proposition 227 and the implementation of Proposition 227 by school districts; 2) the process by which a child is designated limited-English proficient or English Learner, the characteristics of these students, and rates in the number of students redesignated fluent-English-proficient; 3) bilingual education enrollment before and after Proposition 227 and the characteristics of the students

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enrolled; 4) testing rates for all English Learners and English Learners enrolled in bilingual education; and 5) the impact of bilingual education on achievement in California and nationwide. Two appendices to the second part describe interpretations of Proposition 227 requirements for structured immersion in Los Angeles, San Diego, and San Francisco and Interpretations of Informed Consent and circumstances justifying parental waiver of Proposition 227 in Los Angeles, San Diego, and San Francisco. (Contains 40 references.)

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Policy Matters in Teaching English Language Learners: New York and California

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I. Teaching Language Minorities: Theory and Reality in New York City

This paper is a revision and update of "Teaching Language Minorities: Theory and Reality," in *City Schools: Lessons From New York*, edited by Diane Ravitch and Joseph Viteritti, Baltimore: Johns Hopkins University Press, 2000.

Teaching Language Minorities: Theory and Reality in New York City

Introduction

New York City has been providing special programs for children from language minority families since the 1960s. The most controversial of these is bilingual education. Critics complain that it is a disaster because it produces low scoring students with poor English language skills. Supporters counter that short-term achievement in English is not the goal and that ultimately language minority children who learn to read and write in their native tongue will be more cognitively developed than language minority children who learn to read and write in English. In my opinion, almost everyone is confused to one degree or another, in part because bilingual education is ill-defined and inconsistently implemented and in part because people are generally confused about what test scores mean and how they are used to identify a child as an English Language Learner (formerly called Limited English Proficient or LEP).

This paper will attempt to clear up some of this confusion. First, bilingual education needs to be defined because it has, unfortunately, come to mean many things to many people, a problem which has only contributed to the disagreement over it. In fact, some people who appear to be in disagreement about the effectiveness of bilingual education may just be talking about different policies. There are currently three different instructional programs for English Language Learners (ELL): 1) native tongue instruction transitioning to English, 2) structured immersion—all English instruction in a self-contained classroom, and 3) regular classroom instruction with English as a Second Language (ESL) instruction in a pullout setting. These programs are all being implemented in the New York City public schools and all being called bilingual education by state and local administrators, legislators, reporters, and educators. Thus, there is no treatment called "bilingual education" in the sense that it is implemented in the same way and understood to be the same thing by everyone, and this is true, not just in the New York City public schools, but throughout the U.S.

According to state law (sect. 3204 of the Education law), state regulations (Part 154), and city policy, still in effect in 2003, bilingual education should consist of:

1. instruction in native language arts,
2. content instruction (e.g. social studies, science, math) in the native language,
3. instruction in English as a Second Language (ESL).

In a transitional bilingual education program (TBE), students learn to read and write first in their native tongue and learn subject matter in their native tongue, but are gradually transitioned to English. In a dual immersion or maintenance program, students not only learn to read and write in their native tongue and learn subject matter in their native tongue, but both languages are continued throughout the program since its goal is to develop full proficiency in both the native language and English. It is these types of programs I am referring to when I use the terms bilingual education and "bilingual education taught according to the dominant theory."

There are also two all-English techniques for educating English Language Learners—structured immersion, and regular classroom instruction with ESL pullout. ESL pullout is a program in which the English Language Learner is in a regular classroom with fluent English speakers, but is pulled out for an hour a day, or several hours a week, for small-group

instruction in English. Structured immersion is all-English instruction in a self-contained classroom containing only English Language Learners. The teacher teaches in English, but at a level the student can understand. At the secondary level, these programs are sometimes called sheltered classes (e.g. sheltered English, sheltered Algebra, etc.). Both of these techniques are practiced in the New York City Schools, although structured immersion is called bilingual education, and ESL pullout is occasionally called bilingual education, although both are taught entirely, or almost entirely, in English.

Structured immersion is called bilingual education by school systems if the teacher is bilingual, the students are in a self-contained classroom separate from fluent English speakers, and the classes are typically formed with the stated intent of providing native tongue instruction, either because state law requires it or because interest groups have demanded it. In some of these classrooms there may be some native tongue instruction as enrichment, but it is not a means of instruction nor of acquiring literacy. Occasionally ESL pullout programs are called bilingual education if the students receiving the ESL instruction are of the same language minority group and the teacher is bilingual. The fact that these bilingual education classrooms are taught entirely, or almost entirely, in English is ignored by the administrators, the policymakers, the parents, and the advocates of bilingual education—indeed, the latter passionately *deny* it.

In general, teaching English Language Learners of the same language group and grade only in English in a self-contained classroom was a violation of state and board policy because, according to section 3204 of the Education Law and Part 154 of the New York Codes, Rules, and Regulations, if there are 20 students in a grade of a single language group—enough to fill a classroom—bilingual education must be offered, a requirement that still exists in 2003. School districts that want to be eligible for state funds for English Language Learner programs are *only* allowed to teach English Language Learners completely in English it they have fewer than 20 students in a grade of a single language group.

In 1998 and currently, New York City board policy goes further than state policy. According to board policy, bilingual education should be offered if there are only 15 students in *two* contiguous grades in elementary through junior high schools, i.e. 7.5 students per grade, rather than the 20 required by the state. For high school students, city policy is the same as the state—bilingual education is to be offered when there are 20 or more English Language Learners with the same language background enrolled in the same grade within a school.

Parents have the option of withdrawing their child from bilingual education, but doing so can be difficult and, at least in the past, was discouraged by administrators and teachers. The Fall 2003 City Board of Education web site contains various letters sent to parents informing them of their child's designation as ELL and his or her program placement, but there is no statement of a parent's right to withdraw their child from the program they are placed in.[1] In the past, Chinese parents exercised the right to refuse a bilingual education program assignment more than other language minority parents because in New York City, as in most other school districts, Chinese is defined as one language. In fact, however, although there is a single Chinese written language, there is no Chinese spoken language. None of the inhabitants of China *speak* Chinese—they speak dozens of dialects called Cantonese, Mandarin, Toisanese, Fujianese, etc.

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[1] See http://www.nycenet.edu/offices/d_chanc_instr/ELLregistration/.

A school in New York City with 15 Chinese English Language Learners in two contiguous grades was required to offer a Chinese bilingual program with instruction in Chinese even if each Chinese English Language Learner spoke a different dialect. This is obviously senseless and so most schools just taught the children in English. If any non-English language was taught, it was not the native tongue of all students since that was usually impossible, but Mandarin, the official language of China. Even in those schools that taught some Mandarin as a foreign language, the Chinese English Language Learners learned to read and write initially in English, either in a regular classroom with ESL pullout or in a self-contained classroom that was labeled bilingual education. Many parents refused to allow their child to enroll in a Chinese bilingual program in the first place because they knew that their child's dialect was not spoken by the Chinese bilingual program teacher.

The Facilitation Theory

The theory underlying bilingual education is the facilitation theory, developed by Jim Cummins (1980a; 1980b). This theory has two parts: 1) the "threshold" hypothesis, which states that there is a threshold level of linguistic competence in the first language that a bilingual child must attain in order to avoid cognitive disadvantages and 2) the "developmental interdependence" hypothesis, which states that the development of skills in a second language is facilitated by skills already developed in the first language.

It is a limited theory, however, because it ignores the issue of the great variation in written language. In particular, it is silent on how you would teach Asian children to read and write in their native tongue and why you would want to do that. The majority of Asian languages use an ideographic system of writing, rather than an alphabetic or phonetic system, and have no similarity to English in appearance,[2] thus reducing the number of transferable skills, such as sight recognition of words, sounding out of words, and so forth. These languages also take much longer to master than English. In other words, learning to read and write in the native language, if it is ideographic (i.e. Chinese or Japanese), may actually be harder than learning to read and write in the second language, if the latter is English or another phonetic, alphabetic language, even if the child has no knowledge of the second language. Indeed, some Chinese bilingual teachers in New York City are not literate in their native tongue because they were educated in the U.S. and becoming literate in Chinese is so difficult that even fluent speakers of a Chinese dialect cannot do it on their own. As a result of these problems, non-phonetic bilingual education programs that actually teach initial literacy in the native language do not appear to exist at the moment, although many of them are taught in self-contained classrooms, are called bilingual education, and receive bilingual education funding.

For languages with non-Roman alphabets, such as Hebrew, Arabic, the Indian dialects, Russian, and Khmer, it is difficult for bilingual education programs to teach initial literacy in the native tongue, even if the language is phonetic, because educators perceive it to be too difficult or distracting to teach initial literacy, particularly to young children, in a language with a completely different alphabet from English. One Russian bilingual program teacher in New York City explained that she was not teaching her Russian English Language Learners to read and

[2] The exceptions are Hmong and Vietnamese, whose written languages were created by westerners with Roman alphabet languages.

write in Russian because she thought it would be too confusing until they had a solid foundation of English language literacy.[3]

Interestingly, none of the federal and state laws or bilingual education theory recognize these limitations to the facilitation theory. According to bilingual education theory and New York state law (and that of many other states), all English Language Learners can be taught initially to read and write in their native tongue regardless of the language. Indeed, no official document acknowledges any practicality other than the numbers of students of the same language group and the number of certified teachers in that language group.

Moreover, this silence has been going on for more than two decades. In 1977, the Board of Education negotiated a Lau agreement with the U.S. Office for Civil Rights and issued Special Circular No. 69, which defined the criteria for identifying non-Spanish-speaking English Language Learners and the program they would receive. This six page memo solemnly describes the program that non-Hispanic (mostly Asian) English Language Learners would receive in exactly the same terms used for Spanish speakers. Not one word of explanation was offered about how one teaches native language arts or substantive subject areas to children who have a non-Roman alphabet language and for whom there are no textbooks. Indeed, there is not a single non-Hispanic language minority group with textbooks in their language written for the U.S. curriculum. But this and subsequent Board memos are silent on this problem. So are the state laws and regulations.

Classroom observations in New York City, Massachusetts, California, and Minnesota indicate that an English Language Learner will be taught to read and write in their native tongue only if a) their native tongue is a phonetic language with a Roman alphabet, b) their teacher is fluent in their dialect/language, c) all the students in the classroom speak the same dialect, d) there are published textbook materials in the native tongue written for the U.S. curriculum, and e) the dialect or language is the official language of one or more large countries. In my experience, only the Spanish speakers receive bilingual education according to the dominant theory because they are usually the only ones that fulfill all the conditions for receiving it.

Nevertheless, claims are made in reports to the state about offering bilingual education when the numbers indicate there couldn't possibly be a bilingual program taught according to the dominant theory and state law. For example, one intermediate school in New York City in 1997-98 claimed to have a Chinese bilingual program for 2 students in 7th grade and 6 students in 8th grade, although there is no Chinese bilingual teacher at that school. At the same school, there were apparently 4 Haitian students in 7th grade and 8 in 8th grade receiving bilingual education from 3 Haitian bilingual teachers, a pupil-teacher ratio of 4 to 1. Another school claimed to have a Haitian bilingual program for 8 Haitian students across three grades: 3, 4 and 5—a pupil-teacher ratio of 8 to 1 even if all three grades were combined. This same school claimed to have a French bilingual program for six students in grades four and five—a pupil-teacher ratio of 6 to 1.

In a bulletin produced by the New York City Board of Education (2002), the New York City school administration claims to be offering bilingual education to 45 Albanian, 58 Punjabi,

[3] There is, however, a Russian bilingual program called Globe, for gifted students from Russian speaking homes where literacy is taught simultaneously in Russian and English. But even in this program, the emphasis is on English, and Russian is only taught because it is believed these gifted students can handle it.

and 120 Urdu speakers. In 2002-03, the city data file shows bilingual education being offered to the following ELL language groups with less than 10 speakers citywide: Hebrew, Sinhalese, Catalan, Hindi, Pilipino (AKA Tagalog), Vietnamese-Chinese, Fulani, Macedonian, Georgian, Italian, Khmer (AKA Cambodian), Moldavian, Native American Languages, and Ukrainian. The 2002-03 data file also shows bilingual education being offered to the following language groups with less than five speakers citywide: Afrikaans, Twi, Wolof, Armenian, Bambara, Cham, Dari/Farsi/Persian, Dutch, Gujarati, Serbo-Croatian, Ibo, Indonesian (AKA Bahasa), Japanese, Khoisan, Pashto (AKA Pushto), Romanian, South Arabic, Thai, Tibetan, and Uzbek and to the following language groups with only one speaker student citywide: Amharic (AKA Ethiopian), Belorussian, Burmese, French-Khmer, Ga, German, Greek, Hungarian, Kanuri, Lao, Lithuanian, Malay, Malayalam, Malinke, Niger-Congo, Seneca, Shan, Sukuma, Swahili (AKA Kiswahili), Tigrinya, Turkish, and Yonba.

Obviously, the New York City public schools could not actually be offering bilingual education to these students since it is prohibitively expensive. What is more likely is that these students are in a regular classroom and the bilingual teacher is in fact an ESL pullout teacher who is bilingual, although not necessarily in the language spoken by the children he or she is teaching. In the schools with very small numbers, the ESL teacher may travel from school to school.

A Bengali bilingual program at an elementary school in New York City not only taught completely in English, but the sign on the teacher's small room said "ESL Content Instruction." Why then was it called a bilingual program by the city, the principal, and the teacher? Probably because the teacher was bilingual in English and Bengali and all the students who came to see him were Bengali speakers. Nevertheless, because English was the means of instruction—reading and writing was taught in English and all subject matter was taught in English—*and* because these students spent most of their day in a regular English language classroom, this was not a bilingual education program according to the dominant theory of the literature. It seems to be what the sign on the door says—an ESL program. If the students had been in the ESL teacher's classroom all day, it would have been a structured immersion program.

Figure 1 shows the percentage of all English Language Learners and the five largest language minority groups in New York City who are enrolled in nominal bilingual education in 1994-95, 1997-98, and 2001-02. The 1994-95 data come from a 1994 Board of Education report (New York City Board of Education, 1994). The 1997-98 data come from individual school reports that are sent to the Office of Bilingual Education at the State Department of Education.[4] The 2001-02 data are from the Facts and Figures booklet (New York City Board of Education, 2002) and the 2002-03 data comes from the Department of Information Technology at the NYC Board of Education.[5] As shown, the percentage of English Language Learners enrolled in nominal bilingual education (e.g. in a program called bilingual education) has been declining since 1994-95 so that by 2002-03 only 43 percent of all English Language Learners and only 56 percent of Spanish speaking English Language Learners were in a program called bilingual education.

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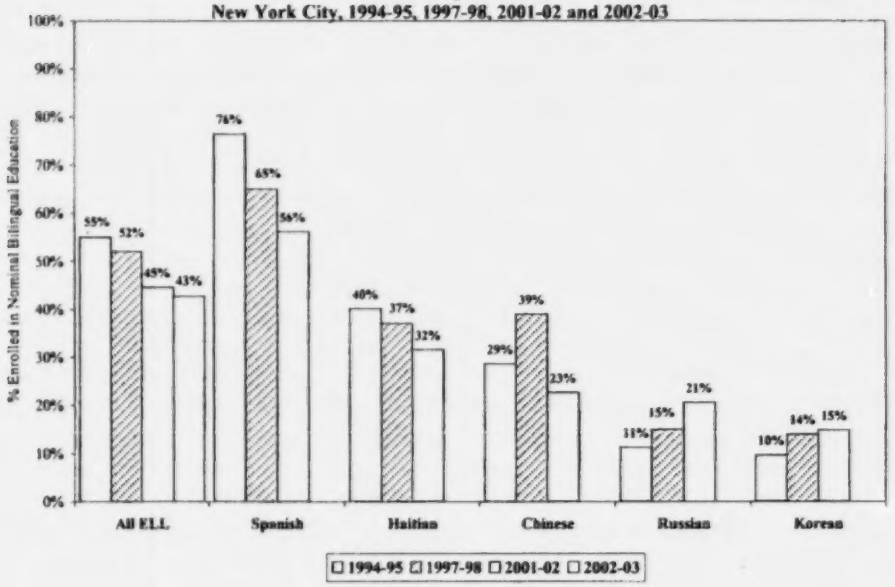
[4] There reports were not filed for the high schools in that year (and perhaps not in other years) and so the 1997-98 data are for elementary and middle school students only.

[5] The 2002-03 data does not have a language breakdown for all English Language Learners, only for those enrolled in bilingual education.

Figure 1 also shows that in 2001-02, 32 percent of Haitian English Language Learners, 23 percent of Chinese English Language Learners, 21 percent of Russian English Language Learners, and 15 percent of Korean English Language Learners were in nominal bilingual education. This is a decline since 1994-95 for the Haitian and Chinese English Language Learners, but a small increase for the Russian and Korean English Language Learners. However, since there are no textbooks in any of these languages for the U.S. curriculum and three do not have a Roman alphabet, these students will, contrary to the dominant theory of bilingual education, learn to read and write initially in English and learn science, math, and social studies from English language textbooks, although explanations may be given in the native tongue in some classrooms. Therefore, the percentage of Haitian Creole, Chinese, Russian, and Korean students predicted to be in a bilingual education program taught according to the dominant model in the literature is likely to be zero. Of the students enrolled in nominal bilingual education, the Chinese, Russian, Korean. Haitian, and other languages represent 10 percent and the Spanish speakers 90 percent.

Figure 1
% of English Language Learners Enrolled in Nominal Bilingual Education by Language Group,
New York City, 1994-95, 1997-98, 2001-02 and 2002-03



Since most English Language Learners in New York City are receiving instruction only in English, including many of those enrolled in programs called bilingual, critics of bilingual education who blame the low achievement of English Language Learners solely on bilingual education are wrong. Even the relatively lower Hispanic achievement cannot be blamed solely on bilingual education since, in 1997-98, although 65 percent of Hispanic English Language Learners in New York City were in bilingual education, only 21 percent of all Hispanic students were in bilingual education because only 1/3 of Hispanic students were English Language Learners. In 2001-02, only 13 percent of Hispanic students were enrolled in bilingual education. This means that doing away with bilingual education will not dramatically improve the relative achievement of Hispanic students in the New York City schools and in the U.S.

The History of Bilingual Education in New York City

Indeed, we know that eliminating bilingual education will not dramatically improve the achievement of Hispanic students because the impetus for bilingual education was the relative low achievement of Hispanic students taught completely in English. Long before bilingual education was on the scene, the New York City Board of Education and the Fund for the Advancement of Education undertook a major research project on the education of Puerto Rican students in the city, published in 1958 as *The Puerto Rican Study* (Morrison, 1958). This study found that Puerto Rican students had the lowest graduation rate of any identifiable ethnic or racial group. That report recommended English language orientation classes for new immigrants and the classification of students according to their English language ability (Morrison, 1958).

It was not until the 1960s civil rights movement that Hispanic activists put bilingual education on the political agenda nationally and in New York City specifically by depicting Hispanic students as victims of an educational system that had deprived them of their native tongue and culture. The first bilingual education programs in New York City were established in 1968, one in the Ocean Hill-Brownsville School District in Brooklyn at P.S. 155 and another at P.S. 25 in District 7 (Romero, 1978). More followed in quick succession.

Hispanics in New York City continued to have lower achievement than Anglos after bilingual education just as they had with all-English instruction. So in 1972, the *Aspira* lawsuit was filed, named after the Organization (Aspira of America) that had first begun building the legal case on behalf of "Spanish-speaking or Spanish surnamed" children "whose English language deficiencies prevent them from effectively participating in the learning process and who can more effectively participate in Spanish." A consent decree was signed between Aspira and the Board of Education which required that such children be so identified and classified at least once a year and be provided an appropriate program of Spanish and English literacy and content area instruction in Spanish (Santiago, 1978).

However, determining the eligible class of children to receive this program turned out to be difficult and contentious and the litigants found themselves back in court. The Board of Education had created a group of tests called the "Language Assessment Battery" [L.A.B.][6] in

[6] For more information on this assessment, see http://www.nycenet.edu/daa/test_info/#LAB.

both English and Spanish. Those who scored higher on the Spanish version than on the English version would be enrolled in bilingual education programs, but only if they scored above the 10th percentile on the Spanish L.A.B.

The plaintiffs demanded that there be no cutoff at all—that every Spanish-surnamed student receive the Spanish L.A.B. and be assigned to the bilingual program if he or she scored better on it than on the English version, regardless of how high their test scores were. After listening to the conflicting testimony, the court concluded:

> The most vivid point to emerge from all the argumentation is that we confront an enormous amount of speculation and uncertainty... (*Aspira*)

"Without approaching confidence or certainty," the Court defined the plaintiff class as Hispanic students who scored at or below the 20th percentile on the English L.A.B., but higher on the Spanish L.A.B (*Aspira*, 1164). The Court then went on to say:

> The crudity of this formulation is acknowledged on all sides. It is not possible to say with precise and certain meaning that an English-version score at a given percentile is similar to the same percentile score on the Spanish version...But we are merely a court, consigned to the drawing of lines, and we do the best we can (*Aspira*, 1168).

Identifying a Child As Limited English Proficient

The judge in the *Aspira* case accurately portrayed the state of knowledge. Unfortunately, this situation has not improved with time. Moreover, his decision reflects the continuing willingness of people to select criteria despite the fact that they know they are arbitrary and meaningless.

The identification process in New York City in 1997-98, typical of that in other school districts in New York and in other states, involved the following steps:

- STEP 1) administer a home language questionnaire to all students;
- STEP 2) administer the oral portion of the L.A.B. (English proficiency test) to students who come from a family where a language other than English is spoken;
- STEP 3) administer the written portion of the L.A.B. to end-of year kindergarten and older students to students who come from a family where a language other than English is spoken;
  - If student is not Spanish surname or speaking and scores at or below the 40th percentile on the L.A.B., he or she is classified as limited in English and placed in an appropriate program;
  - If student is Spanish surname or speaking, and scores at or below the 40th percentile on the L.A.B., he or she is classified as limited in English and goes to STEP 4;
- STEP 4) administer the Spanish L.A.B. to Spanish surname or speaking students and assign to bilingual education even if the student scores the same or lower on the Spanish L.A.B..

Step 1 in the identification process, requiring that the home language survey be administered to all students, is a change from the process established in 1975 by *Aspira* and in

place through the 1995-1996 school year. *Aspira* did not require a home language survey for Spanish surname students. As shown in Table 1, from 1975 through 1996, Spanish surnamed or Spanish speaking students were eligible to take the L.A.B. without a home language survey determining that a language other than English was spoken in the home. *Aspira* required, however, that Hispanics be assigned to bilingual education only if they scored at or below the 20th percentile on the English L.A.B., *and* their Spanish score was higher than their English score. This acted as a screening device in somewhat the same way the home language survey would have. In 1989, the school district stopped using the Spanish language score as a screening device, but failed to institute the home language survey in its place. The practical effect of this is that from 1975 to 1996, and even more so from 1989 to 1996, some unknown number of Hispanic students from English-speaking families was assigned to bilingual education.

In 1977, a home language survey began to be administered and used as a screening device for non-Hispanic entrants into the public schools as part of the *Lau* agreement with the Office for Civil Rights. Thus, from 1977 until 1996, entering non-Hispanic students were more accurately identified as limited in English than Hispanic students because the only non-Hispanic students classified as limited in English by the L.A.B. were those from families where a language other than English was spoken. Although there will still be misclassification of students from this group (those that are fluent in English, but low scorers), there will be fewer than there would be if an English language proficiency test were administered to all non-Hispanic entering students.

In 1996, the city decided to stop automatically testing all Spanish-speaking or Spanish surnamed students, regardless of their home language and to start using the Home Language Identification Survey (HLIS) as a screening device for all students. This policy has continued to the present day. All students must come from a non-English speaking environment, as determined by the HLIS, to be eligible to take the L.A.B. In short, some 21 years after *Aspira*, Hispanic English Language Learners were finally treated the same as non-Hispanic students. Ironically, it was their advocates who had demanded their unequal treatment.

These assessment procedures and tools may give the appearance of scientificity, but it is an illusion. Every single step in this process is capable of classifying a student who is fluent in English as an English Language Learner, and this was even more so from 1975 to 1996, when Hispanic students did not even have to be from a Spanish-speaking family to be classified as limited in English and assigned to a bilingual education program.

The Home Language Identification Survey. The home language survey in New York City, which is still being used as of 2002-03, consists of the following questions:

1. What language(s) does the child understand? ____English ___Other_____
2. What language(s) does the child speak? ____English ___Other_____
3. What language(s) does the child read? ____English ____Other_____ ___None
4. What language(s) does the child write? ____English ____Other_____ ___None
5. What language is spoken in the child's home or residence most of the time? ____English ____Other_____
6. In what language does the child speak with parents/guardians most of the time? ____English ____Other_____

7. In what language does the child speak with brothers, sisters, or friends most of the time? ____English ____Other_____
8. In what language does the child speak with other relatives or caregivers (e.g. babysitters) most of the time? ____English ____Other_____

Table 1

New York City and State Standard

for Classifying Student As Limited English Proficient or English Language Learner,

1975-2003

	BOARD STANDARD		STATE STANDARD
Year	**Spanish Surname or Speakers**	**Non-Hispanic English Language Learners**	**All English Language Learners**
1975-1989	*Aspira:* at or below 20th percentile on English L.A.B. and higher score on Spanish L.A.B. for *all* Spanish Surname or Spanish Speaking students		
1978-1989		*OCR:* 20th percentile on English L.A.B. for non-Hispanic students identified as having a home language other than English	
1980-1989			at or below 23rd percentile on an English language assessment test
1989*-1996	at or below 40th percentile on English L.A.B. for all Spanish surname or speaking students regardless of Spanish L.A.B. score	at or below 40th percentile on English L.A.B. for students identified as having a home language other than English	at or below publisher's cut-off on oral English proficiency test; if pass oral test, at or below 40th percentile on standardized achievement test in English reading
1996-	at or below 40th percentile on English L.A.B. for students identified as having a home language other than English	at or below 40th percentile on English L.A.B. for students identified as having a home language other than English	"

2002-	Cut-off score on LAB-R (revised) aligned with state and local standards in language arts	Cut-off score on LAB-R aligned with state and local standards in language arts	Cut-off score on LAB-R aligned with state and local standards in language arts or the New York State English as a Second Language Test (NYSESLAT)

* 40th percentile optional in 1989-90 for state aid; required in 1990-91.

The New York City home language survey is similar to those used all over the U.S. In 1997-98 and in 2003-04, a student was potentially limited in English and eligible to take the L.A.B. if any one response to questions 1-4 *and* any two responses to questions 5-8 includes a language other than English. So if a parent answered "English and Cantonese" to question 1 and 2, only "English" to questions 3-4, "Cantonese" to questions 6 and 8, but only "English" to questions 5 and 7, his or her child was considered potentially limited in English despite the fact that he or she speaks English and can only read and write in English. In short, the problem with home language surveys in general is that they do not try to determine if the child in question is fluent in English. The questions are intentionally broad in order to identify children who come from language minority backgrounds, not children who are limited in English.

Norm-Referenced Tests. The over-inclusiveness of the home language survey would not be a problem if the subsequent steps accurately identified who was not fluent in English. Unfortunately, they do not.

The oral part of the Language Assessment Battery (L.A.B.) was normed in 1981-82 on a citywide population that consists mostly of English native speakers. The written part of the L.A.B. was normed in 1985 on the same citywide population. In other words, questions were selected so that their answers produced a normal distribution of scores among a sample of all students in the city's public schools.

The criterion for determining whether a child is limited English proficient was, from 1989 until Fall 2002, the 40th percentile. It is a mathematical principle that 40 percent of the population scores at the 40th percentile. If the L.A.B. were administered citywide, 40 percent of the children in the city, almost all of whom are English native speakers, would be classified as limited English proficient. In Fall 2002, the L.A.B. was revised (now called the LAB-R) and aligned with state standards in language arts. The new standard for designating a child as ELL is not a specific percentile, but a level of proficiency. In fact, however, levels of proficiency correspond to percentiles and so it is an absolute certainty that the new standard will classify some children as English Language Learners because they come from a family where a language other than English is spoken and they are low scorers in language arts (as are many children who know no language other than English). Indeed, there is no cut-off score except 0 that will not classify children who are fluent in English as limited in English because the tests cannot tell the difference between a child who does not know English and a child who does not know the answer.

An important question is why people set norms for limited English proficient students that cannot be met by 40 percent, or currently some other percentage, of the citywide student population. One reason is ignorance. Educators seem to have been misled by the constant criticism they receive from intellectuals, policymakers, and reporters who castigate them for such as sins as having "only half their students at grade level." In my discussions with school personnel, I have found most of them ignorant of the fact that nationally it is only possible to have half the population at grade level.[7]

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[7] The concept of grade level and reading below grade level is almost universally misunderstood, not only by laymen, but by educators. Grade level is simply the average achievement for a particular grade, it has no "absolute" meaning. It is not possible, for example, for all students in the norming population to be above grade level because it is not possible for all students to be above average, only half can be.

Another reason why people adopt a standard for English Language Learners that cannot be met by 40 percent, or some other percentage, of the students in the city is confusion. Educators apparently believe that children who score below average—any score below the 50th percentile—are children who are in academic difficulty. Since the home language survey identifies those who are from a home where a language other than English is spoken, many educators believe that setting a standard such as the 40th or the 20th or the 10th percentile identifies children who are academically in trouble because they come from a home where a language other than English is spoken.

Indeed, the judge in *Aspira* reiterated this common misperception when he stated "that a Hispanic student scoring better than a fifth of his English-speaking peers on the English-version L.A.B. has a level of proficiency enabling him to participate effectively in English-language instruction." The implication of his statement is that a student scoring worse than a fifth of his English-speaking peers on the English version L.A.B. has a level of proficiency that *prevents* him from participating effectively in English-language instruction.

This is, however, wrong. The 20th percentile is that point at which 20 percent of the population scores—no more and no less. All of the students, including those scoring below the 20th percentile, could be extremely smart and highly knowledgeable (let us say by comparison to previous generations). Conversely, all the students, including those scoring above the 99th percentile, could be stupid and ignorant (let us say by comparison to previous generations).

We just can't tell whether students are smart or stupid in an absolute sense from percentiles, or from any cut-off score computed in order to differentiate children, even if they claim to be absolute standards. The correlation between so-called absolute or criterion referenced standards and norm referenced or rank ordered standards is somewhere between .8 and .9 depending on the tests. Apparently we human beings do not know any other way to evaluate than comparatively, either explicitly with norm referenced tests designed to produce a bell shaped curve or implicitly with criterion referenced tests that have larger categories—what the average student knows at a certain age, what the below average student knows at a certain age, and what the advanced student knows at a certain age.

Oral Proficiency Tests. All New York City students identified by the home language survey as potentially limited in English have to take an oral proficiency test—the listening and speaking portion of the L.A.B.—as well as the written portion. Beginning kindergarten students only take the oral portion.

On the face of it, oral proficiency tests would seem to be better at determining whether a child knows enough English to function in a regular classroom than a written norm referenced achievement test because the child doesn't have to know how to read to take an oral proficiency test. Unfortunately, oral proficiency tests are no better than standardized achievement tests and for many of the same reasons.

Oral proficiency tests are known to be unreliable—that is, you cannot get the same outcome in subsequent tests of the same child (Ramirez, Yuen & Ramey, 1986) —and invalid—that is, they do not accurately determine who is an English Language Learner (Baker & Rossell, 1987; Rossell & Baker, 1988). Like standardized achievement tests, oral language proficiency tests cannot tell the difference between a student who does not know English and a student who does not know the answer—that is, they confuse intelligence with knowledge. In addition, the same

arbitrary cut-off points are used. There have been several experiments in which oral proficiency tests have been administered to English monolingual students. Between 40 and 50 percent of these children who know no language other than English received a score that classified them as limited-English-proficient (Berdan, So & Sanchez, 1982; U.S. Census Bureau, 1984; Perlamn & Rice, 1979) . Other studies have found the tests classify students as limited in their native language, as well as in English (Duncan & De Avila, 1979). In addition, the tests do not agree with each other. A student can be classified as limited-English proficient by one test, but not by another (Ulibarri, Spencer & Rivas, 1980; Gillmore& Dickerson, 1979; Cervantes, 1982; Pelavin & Baker, 1987).

An experiment in Chicago suggests that even above-average students are not immune from being classified as limited-English-proficient by an oral proficiency test. The research staff of the Chicago Board of Education administered the Language Assessment Scales (LAS) to students who spoke *only English* and were *above* the citywide ITBS norms in reading. Almost half of these monolingual, above average, English speaking children were misclassified as non- or-limited English speaking. Moreover, there is a developmental trend. Seventy-eight percent of the English monolingual five year olds, but only 25 percent of the 14 year olds were classified as limited in English (Perlman & Rice, 1979).

Teachers are better than tests in determining whether a child is proficient in English, but even they make mistakes and for the same reasons. Like the tests, they can become confused as to whether a child does not understand English or does not know the answer, particularly if they do not know the child very well.

In short, the procedures and criteria used by New York City (and every other school district in the U.S.) to determine if a child is an English Language Learner identify more children as ELL than actually are because they cannot tell the difference between a child who does not know English and a child who does not know the answer. Second, whatever criterion is used will have been established by an English speaking population and so will classify fluent English speakers as ELL no matter how fluent they are in English simply because they score low on the test.[8] Categorical proficiency levels (e.g. A to G or proficient to non-English speaking) do not solve this problem since they are produced by the same process as percentile cut-off scores and correspond to them.

Not only do fluent English speakers get classified as ELL simply because they score low, but these students get assigned to bilingual education. I visited a first grade Spanish transitional bilingual education class in New York City in 1998 composed only of Hispanic students. Nevertheless, during the Spanish reading period, the teacher translated most of what she said in Spanish into English because there were Hispanic students in her class who understood little or no Spanish. They had been assigned to the bilingual program, not because they did not know English, but because they had scored below the 40th percentile on the L.A.B.

As noted above, the original *Aspira* decision required dual language testing. A student was classified ELL only if they scored higher in Spanish than in English among those who scored below the 20th percentile in English. This reduces error, but it does not eliminate it because the two tests are not equivalent. The 40th percentile on the Spanish L.A.B. is not the same ability level as the 40th percentile on the English L.A.B. For one thing the tests are normed

[8] Nor can the tests be normed on English Language Learners since they do not know English.

on different populations—Spanish-speakers in the case of the Spanish L.A.B. and all students in the case of the English L.A.B.—and for another we do not yet know how to make questions equal in difficulty in two languages. This is probably why the New York City public schools stopped using a student's score on the Spanish L.A.B. as a criterion.

Even if we were able to, few educators would be able to resist concluding that a language minority student who scores at the 10th percentile in Spanish and the 11th percentile in English is limited English proficient. Educators are as confused as the general public as to what tests mean and most of them appear to believe that a low score has some absolute meaning.

Moreover, there appears to be no concern about the fact that more students are identified as limited-English-speaking than actually are because a) city officials believe in the value of bilingual education or, at the very least, extra help for children from language minority homes and classifying them as ELL gets them extra help, and b) it means more state and federal money for their students, something no school district in the country would turn down. In a June 28, 1989 memo (New York City Board of Education, 1989), the Chancellor ordered the Community Districts to implement the new state standard of the 40th percentile as of Fall 1989, because students scoring between the 21st and the 40th would now "generate State ELL Aid." The promise of more money was apparently all the explanation he needed to offer to justify the change.

Even if a language minority student is accurately identified as ELL upon entering the school system, a classification criterion of the 40th percentile guarantees that at a minimum 40 percent of the students will never get *re*classified as fluent English proficient (FEP) no matter how good the program is and no matter how proficient they are in English. Moreover, the principals and bilingual education directors appear to know this. A large number of the program narratives in the reports to the state in 1997-98 referred to English Language Learners who have been in ESL and bilingual programs for years only because they could not reach the 40th percentile. Because the new test and cut-off score will not eliminate this problem, I predict that future reports will refer to English Language Learners who have been in ESL and bilingual programs for years only because they could not reach the cut-off score on the LAB-R.

Not surprisingly, the number of English Language Learners in New York City increased dramatically, at a much faster rate than the number of students, during the time period that the 40th percentile was used to classify a student as ELL. As shown in Table 2, the number of English Language Learners in the New York City public schools increased by about 35,000 students from 1987-88 to 1990-91 as a result of the 1989 change in the standard for defining a child as limited in English from the 20th to the 40th percentile. In other words, one can create more or fewer English Language Learners simply by changing the criterion. The growth in ELL enrollment declined by 5 percent with the 1996 decision to administer the home language identification survey to entering Hispanic students and to only administer the L.A.B. to those that came from a home where a language other than English is spoken.

Table 2
New York City Limited English Proficient or English Language Learner Student Enrollment, 1987-02

Year	Policy Changes	Total Enroll.[a]	ELL Enroll. (Gen. Ed.)	ELL Enroll. (SPED)		Total ELL Enroll.	Annual Change in Enrollment Total	ELL	% ELL
87-88		939,933	93,637	12,641	[b]	106,278			11%
88-89		936,153	90,915	12,274	[b]	103,189	-0.4%	-3%	11%
89-90	40th %ile*	940,000	110,246	14,883	[b]	125,129	0.4%	21%	13%
90-91		957,000	121,777	16,440	[b]	138,217	1.8%	10%	14%
91-92		973,000	125,984	17,008	[b]	142,992	1.7%	3%	15%
92-93		995,000	134,124	18,107	[b]	152,231	2.3%	6%	15%
93-94		1,016,000	154,526	20,861	[b]	175,387	2.1%	15%	17%
94-95		1,034,000	163,558	22,080	[b]	185,638	1.8%	6%	18%
95-96		1,075,605	167,602	24,000		191,602	4.0%	3%	18%
96-97	LM Only**	1,075,635	162,154	20,439		182,593	0.0%	-5%	17%
97-98		1,083,943	154,311	20,832	[b]	175,143	0.8%	-4%	16%
98-99		1,093,071	148,399	20,000		168,399	0.8%	-4%	15%
01-02		1,098,832	127,061	17,881		144,942	0.2%	-5%	13%
02-03		1,087,255	113,039	12,198		125,237	-1.1%	-14%	12%
Change 88-89 to 89-90		3,847	19,331	2,610		21,941	0%	21%	2%
Change '95-96 to '97-98		8,338	-13,291	-3,168		-16,459	2%	-11%	-2%
Change '95-96 to '02-'03		11,650	-54,563	-11,802		-66,365	1%	-35%	-6%

[a] Includes special education.

[b] Estimated from '95-'96 and '96-'97 data.

* Change from the 20th to the 40th percentile on L.A.B. as criterion for classifying ELL.

** L.A.B. only administered to students from non-English speaking families, not all new Hispanic students.

Source : New York City Board of Education, New York City Department of Education.

As shown in Table 2, as of 2002-03, there are only 113,039 English Language Learners in regular education classified as ELL. If we add to this English Language Learners in special education, the percentage ELL in the school system is 12 percent, down from a high of 18 percent before the 1996 policy change regarding Hispanic students. Total enrollment continued to grow over this time period, however, so it seems that the policy change of requiring Hispanic parents to fill out the home language survey is responsible for the decline in the numbers and percentages of English Language Learners.

What all of this research indicates is that national (Rossell, 2000), state, and local estimates of the number of English Language Learners cannot be relied on to tell us who does or does not know English. The true number of English Language Learners is much smaller than the published estimates, since the latter include low scoring English proficient children, and state and local officials can increase or decrease the number of English Language Learners simply by changing the standard.

Program Effectiveness—Reclassification Rates

Since the 1980s state law has required that students be in bilingual education for no more than three years. However, this may be extended for another three years with the approval of the commissioner. This may not end bilingual education for an English Language Learner in New York City, however, since according to a 1995 letter written by a special Assistant to the Chancellor to the attorney for the Bushwick Parents Organization, the New York City public schools served English Language Learners until they reached the 40th percentile no matter how many years it took (Zwang, 1995). They simply did not use state funds to pay for the special program after six years. Thus, the city interprets state laws and regulations as funding requirements. If they want state money, they must abide by these rules. If they are willing to do without state money, they can ignore state rules.

There is very little information on how long students are classified ELL and how long they stay in special programs. The New York City public schools, like almost all school districts in the country, do not do scientific program evaluations. In general, the reports they produce to evaluate their programs are simple descriptions of what the program's goals are, what the program did, which schools had the programs, and how many students were served. On occasion, there will be aggregate statistics on achievement for the students served. But even aggregate achievement statistics are rare and they are not available for English Language Learners.

A scientific program evaluation has the following four characteristics. First, there should be a treatment group—for example, English Language Learners in a bilingual program—and one or more comparison groups—for example, similar English Language Learners in one or more types of all-English programs. Second, the achievement (or any other outcome) of these students should be compared after some time period in their respective programs. Third, any differences between the students initially should be controlled statistically in order to give each group a level playing field. Fourth, the *same* students must be followed over time since there is no way to statistically control or match on initial differences, nor would it make any sense to do so, if

different students are in the study at different points in time (Rossell & Baker, 1996a; Rossell & Baker, 1996b; Rossell, 1998).

The only data on the effectiveness of bilingual education programs in New York City that is even close to being scientific, is the 1994 report published by the Board of Education (New York City Board of Education, 1994). According to this study, the percentage of English Language Learners still classified ELL after three years (from 1990-93 or 1991-94) is 41 percent for those entering in kindergarten, 52 percent for those entering in first grade, 62 percent for those entering in second grade, 67 percent for those entering in third grade, 85 percent for those entering in sixth grade, and 89 percent for those entering in 9th grade. One way to interpret these results is to compare them to a citywide student population consisting mostly of English native speakers. When the L.A.B. was normed in 1981 (oral) and 1985 (written), 40 percent of the citywide population received a score that would designate them as ELL. Since for most of them this is their true score (i.e. it is not caused by the fact that they do not understand English), forty percent of these English monolingual students would still be classified as ELL no matter how many years they were in bilingual education.

Using this standard, the results for the kindergarten cohort are excellent. They are achieving what children citywide would achieve since only 41 percent are still ELL after three years in the public schools. Even the results for the first grade cohort are very good—52 percent are still ELL after only three years in the public schools compared to 40 percent of the citywide population. The results after that do not look good culminating in 89 percent of the 9th grade ELL cohort still classified ELL after three years. We do not know, however, whether the problem is the test or the students or the programs. The report itself offers no explanation for this pattern across the grades.

Part of the answer may be the L.A.B. itself. It was normed almost 15 years ago. It may no longer reflect the curriculum in the later grades, and if so, the increasing percentage across grades still classified ELL is simply an artifact of the test.

Part of the answer may also be that the earlier children enter a school system, the more their educational experiences are a product of that system and the sooner they are on an equal footing with their peers. Older children will have had a varied early educational experience ranging from good schools to bad schools to none at all. Indeed, there are older children who enter the New York City public schools illiterate in their native tongue. These students not only do not know English, they do not know how to read and write in any language at an age when almost everyone else does. The kindergarten child, by contrast, is only disadvantaged by not knowing English since very few students at that age know how to read and write.

The 1994 Board of Education (New York City Board of Education, 1994) study also shows reclassification rates by program. At every grade students in ESL classes get reclassified fluent-English-proficient at a much faster rate than students in nominal bilingual education programs. The difference is quite large across grades and is unlikely to be due only to the characteristics of the children enrolled in the two programs. Unfortunately, we do not know how much since in this sample 85 percent of the students in the bilingual programs were Spanish-speakers and 70 percent of the students in the ESL programs were non-Hispanic students, most of them Asian.

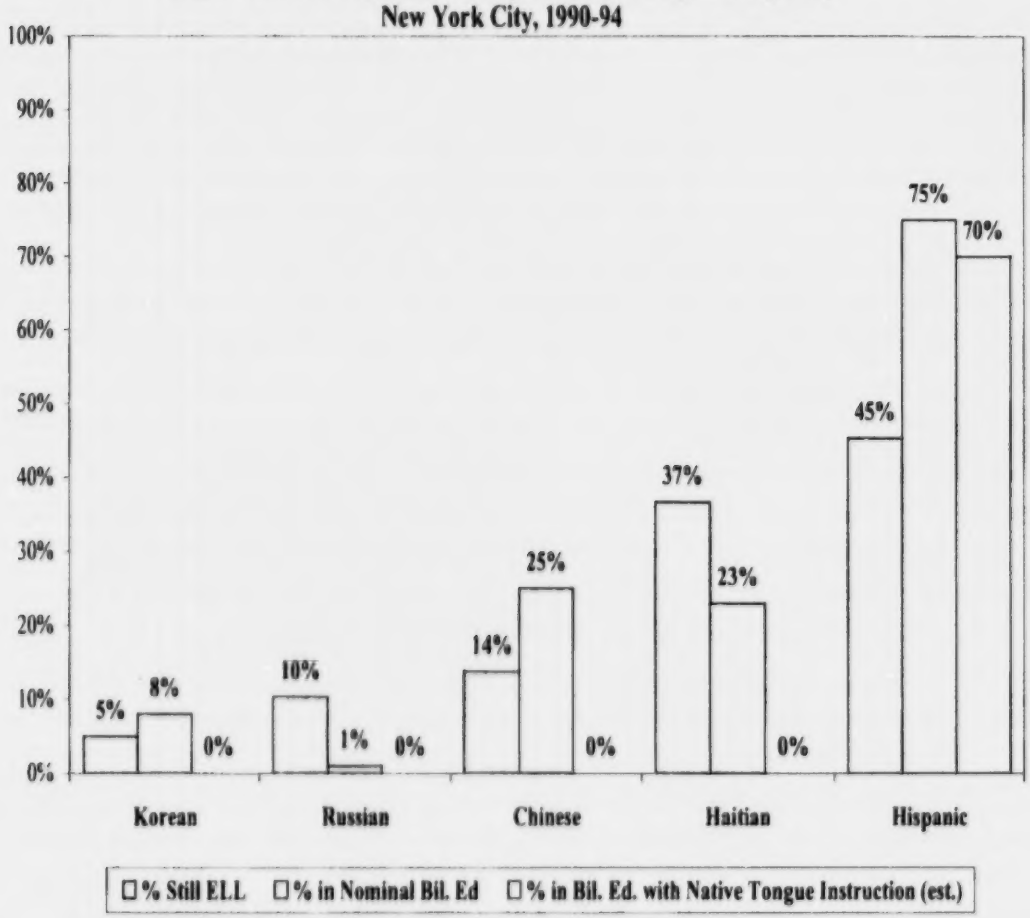
Even controlling for social class does not adequately eliminate the differences in student characteristics between the two programs because it does not eliminate the cultural difference between Asian students and all other American students. Asian students study more and watch less television than other American students and as a result learn more and get better grades than would be predicted from their social class (Rumbaut, 1998). Thus, the difference between the two programs cannot be accurately determined unless this cultural difference is controlled for. In principal, this can be done by comparing the reclassification rates of Spanish-speakers in bilingual education to Spanish-speakers in ESL programs, controlling for student characteristics such as L.A.B. score upon entry into the school system, free/reduced lunch status, parents' occupation, etc. Since 35 percent of Spanish-speaking English Language Learners are in ESL programs, it is in fact possible to do this analysis.

Unfortunately, the school district did not do this and I was not able to obtain the data necessary to do it myself. They did control for the student's L.A.B. score upon entering the school system and that analysis showed that at every level of initial English language proficiency, the bilingual program has a much higher rate of students still classified ELL. For students scoring at the first percentile when they entered the school system in kindergarten, the percentage of students still classified ELL after four years is 20 percent for the ESL program and 50 percent for the bilingual program. The disparity is less for students who know some English and/or are of higher ability. For those entering in kindergarten with scores between the 2nd and 40th percentile, the percentage of students still classified ELL after four years is an average 12 percent for the ESL program and 26 percent for the bilingual program.

The above analysis controlling for the student's English language ability upon entering the school system is still confounded by the large ethnic difference between the students in bilingual education and the students in ESL. Figure 2 addresses this issue by breaking the data down by ethnic group and program enrollment for students entering in kindergarten. The percentage of English Language Learners still classified ELL after four years is compared to the percentage of that ethnic group enrolled in nominal bilingual education and the percentage enrolled in bilingual education taught according to the dominant theory. The percentage enrolled in bilingual education with substantial native tongue instruction—the dominant theoretical model—is 0 for the Chinese, Russian, Korean, and Haitian English Language Learners. And I estimate it to be to be five points lower for the Spanish speakers, although there is no way to tell for sure without visiting every classroom. There is no data on this subject and it is a topic that is seldom discussed.

The only comparison in this chart that I feel is meaningful as a measure of the relative effectiveness of the two programs is that between the Haitian and the Spanish ELL students. Only 23 percent of Haitian English Language Learners are in nominal bilingual education and none in bilingual education taught according to the dominant theoretical model compared to 75 percent of Spanish English Language Learners in nominal bilingual education and an estimated 70 percent in bilingual education taught according to the dominant theoretical model. Although Haitian students have lower test scores and lower social class than Hispanic students, they have eight percentage points fewer students still classified ELL after four years. If we were able to control for the lower test scores and social class of the Haitian students, the gap would probably be even larger favoring ESL.

Figure 2
% of English Language Learners (ELL) Entering in Kindergarten Still Classified ELL After Four Years by Ethnic Group and % in Bilingual Programs, New York City, 1990-94



Thus, I feel confident in concluding that English Language Learners in ESL classes get reclassified as fluent English proficient at faster rates than do similar students in bilingual programs and that this has something to do with the characteristics of the program. Indeed, the authors of the Board of Education report themselves conclude:

> That students in ESL classes exit their programs faster than students in bilingual classes is not surprising, considering that proficiency in English is the criterion for exiting LEP entitlement. As would be expected, the greater the time on task, the greater the level of proficiency on that task (New York City Board of Education, 1994, p. 29).

Although the greater reclassification rate for students in ESL is probably a true program effect, we do not know why. Is it a function of the greater exposure to the English language or the organizational structure or both? It may be that students are tested more and pushed to be reclassified more in the ESL alternative because they are already in a regular classroom and the ESL pullout is a disruption of their education. Getting them reclassified means ending the disruption. The reclassified students in an ESL program continue in the same classroom and program they have always been in.

Just the opposite dynamic is operating in any program with a self-contained classroom, even one taught completely in English. When the student is in a self-contained classroom with second language learners, getting them reclassified disrupts their education. They are pulled out of their classroom and put into a new classroom taught by a new teacher. Many teachers in special ELL programs believe these regular teachers will not provide the English Language Learners with proper support and a nurturing environment.[9]

In addition, there is a cultural enrichment that goes on in the bilingual programs, even the ones taught completely or almost completely in English, that some parents and teachers may be reluctant to give up by having their child reclassified. In short, the reclassification rate might be lower for students in a self-contained classroom than in ESL pullout for reasons not related to the language or quality of instruction. What is most likely, however, is that some of the differential favoring ESL pullout is due to the organizational issues discussed above and some to the greater exposure to English. It would be informative if we could compare the reclassification rates of the Chinese students in self-contained bilingual education classes to those in ESL pullout. If the Chinese students in bilingual education classes have lower reclassification rates than Chinese students in ESL pullout, we would know that the organizational structure is a cause of the differential reclassification rates since the language of instruction is English in both situations. If the reclassification rates are the same then we know that the organizational structure is not an important factor.

These data are from 1994. By 1996, the reclassification rate for bilingual education had not only not improved, but had generated a lawsuit against the state by the Bushwick Parents

[9] According to the Ramirez study (Ramirez, Pasta, Yuen, Billings & Ramey, 1991) as of the fourth year in immersion having been taught completely in English since kindergarten, only 58 percent of the immersion students were mainstreamed. This is only somewhat higher than the 42 percent mainstreamed from the early-exit bilingual program. What these results tell us is students stay in any sheltered program far beyond the time period when they can benefit from them regardless of the language of instruction.

Organization.[10] The lawsuit was filed against the state because of its policy of mass approvals of extensions to the three year time limit for enrollment in bilingual education.[11]

There is no information on whether things have improved since 1966. Each year, the Board of Education produces Annual Report Cards with basic statistics and achievement data for each of the New York City public schools. Achievement data is not available for ELL students separately. These report cards show that approximately 25 percent of elementary school English Language Learners and 14 percent of middle school English Language Learners were reclassified as fluent-English-proficient in 1996-97.[12] The previous year's percentage is 23 percent of elementary students and 11 percent of middle school students. This may look like a miserable statistic, but in fact it is too good to be true. If these were the same students over time (unfortunately, they are not), almost all elementary school students and half of middle school students would be reclassified fluent-English-proficient within four years. It is hard to imagine that things have improved this much since the 1994 longitudinal Board of Education study. It is also hard to imagine that all elementary English Language Learners are above the 40th percentile when only 60 percent of the city student population is above it. But there is no breakdown by program or ethnicity, nor do we know what a true longitudinal study (the same students over time) would show.

Program Effectiveness—Student Achievement

The 1994 Board of Education study looked at the achievement of students who had been reclassified from each program. They found that once students had been reclassified, the students who had been in ESL programs continued to outscore the students who had been in the bilingual education programs on the Degrees of Reading Power and the CAT/5 tests of reading and mathematics. The problem with this analysis is that it did not control for ethnicity, social class, years in the program, or initial proficiency in English.

The 1996-97 Annual School Report Cards for the New York City public schools indicate that approximately 13 percent of ELL elementary students and 8 percent of ELL middle school students were reading above grade level as of 1996-97. Because the definition of grade level in New York City and nationally is below average (i.e. below the 50th percentile), these are good results. We would expect no English Language Learners to be above grade level because English Language Learners are defined by their below average achievement on the L.A.B. Indeed, the only reason there are any English Language Learners above grade level at all is because the L.A.B. is administered in the fall and the CAT/5 in the spring and because the tests are not perfectly synchronized. To put it another way, if the tests were administered at the same time and were equivalent, it would be "error" to have any English Language Learners reading at or above

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[10] The Bushwick Parents Organization against Richard P. Mills, Commissioner of the State of New York (Index No. 5181-95)

[11] While the parents lost their case because the court concluded that the state had the right to approve the extensions to the three year limits, there is a possibility that the lawsuit was the impetus for the Board of Education's 1996 decision to require the home language survey as a screening device.

[12] I am indebted to Public Education Associates in New York City and Ray Demonico, in particular, for computing this figure from the Annual School Reports. However, their table labels this as the percentage attaining proficiency in English. In fact, it is the percentage reclassified as fluent-English-proficient, since a student can be proficient in English--indeed, they can be English monolingual--and still not be reclassified.

grade level since English Language Learners are by definition students who are below grade level in English.

Since the L.A.B. is not a math test (although reading and math ability are correlated), there is a smaller correlation between being below average on the L.A.B. and being below average in math. To put it another way, there is more "error." The percentage of English Language Learners that are scoring above grade level in math is 26 percent in 1997. This is a good outcome since we would expect 0 percent.

To conclude, we cannot tell from aggregate achievement statistics what kind of a job the New York City public schools are doing for English Language Learners. Nor can we tell what kind of job they are doing educating an ELL child from that child's test scores alone. We can assess the effectiveness of alternative programs and we can determine whether a child is achieving more or less than would be predicted from their IQ and home environment, but that requires a massive amount of data and a sophisticated statistical analysis that is simply not available, at least as of Fall 2003. For now, we know only that ESL programs are more effective than bilingual education programs in teaching children enough English to get themselves reclassified FEP. Unfortunately, only about 60 percent of the English Language Learners are in the more effective program.

The federal No Child Left Behind (NCLB) Act, which requires annual assessment on state standards, is the impetus for several reforms in New York City and the state in 2002. Although English Language Learners can still take the Regents exam in their native tongue, as well as have a bilingual dictionary and extended time (DeMauro, 2003), and thus could conceivably graduate without learning English, more English is being required in bilingual education programs. In April 2003, the Board of Regents approved modifications to Part 154 to comply with NCLB's requirement for annual testing on state standards. The modifications specify the English language curriculum for ELLs, but most importantly require that ELLs in bilingual education be held to the same curriculum standards as ELL students in ESL programs (Kadamus, 2003). In addition, the state has developed the New York State English as a Second Language Test (NYSESLAT) as an alternative to the L.A.B. As noted above, a child will be defined as ELL based on designated levels of proficiency on the LAB-R or NYSELAT, not percentile scores (although the two are highly correlated).

In July 2003, the Mayor and the Superintendent of the New York City public schools issued guidelines for transitional bilingual education programs in the city specifying for the first time the amount of English that ELLs should receive in instruction. Their recommendation is that students with limited English initially receive at least 40 percent of instruction in English language development and 60 percent of instruction in their native language, with a graduated increase in English instruction as students progress academically and approach English fluency. At the same time, the Board of Education is also opening 13 new dual language programs, including an Asian Studies and Dual Language High School in lower Manhattan that will provide instruction to native English speakers and native Mandarin speakers in both languages. Mandarin and English speakers will be integrated for all or most of their instruction time and will be expected to comprehend, speak, read and write in both languages.

Conclusions

Bilingual education began as an Hispanic program and it continues to be an Hispanic program, although Hispanic intellectuals and bilingual education advocates deny this. With rare exceptions, only Hispanic English Language Learners are taught according to bilingual education theory—that is, learning to read and write in their native tongue, learning subject matter in the native tongue, and transitioning to English when they have mastered that. The most successful language minority students—Asians—are taught almost entirely in English, although they may be in a program called bilingual education and they may receive some Mandarin instruction, a foreign language to most of them. The implications of the fact that only Spanish speakers are taught according to the dominant theory is that there is something wrong with that theory which claims that children will be cognitively disadvantaged unless they are taught to read and write in their native tongue. This is probably why bilingual education advocates vehemently deny the fact that only Hispanic students are receiving extensive native tongue instruction in bilingual education. To acknowledge the ethnic apartheid that exists is to raise troubling questions about the efficacy of the program and the civil rights of Hispanic English Language Learners.

We cannot tell how effective bilingual education is simply from the aggregate reclassification rates of English Language Learners. The procedures used to identify a child as ELL and to reclassify him or her as fluent English proficient guarantee that some unknown percentage (depending on the cutoff) of English Language Learners from language minority homes will never be reclassified no matter how good the program is and no matter how fluent they are in English. Nor will the new cut-off score solve the problem. There is no English proficiency test created that will not classify substantial numbers of fluent English speakers as limited English proficient, although the amount of misclassification will depend on the test and criterion used. Teachers do a better job than tests in identifying whether a students is ELL, but they are fallible also, not to mention much more expensive than tests.

One reform that would improve the classification process is to revise the home language survey so that it determines whether the child in question is fluent in English. This process could be a two step one:

1) administer a short home language survey to all entrants into the school system;
2) identify as language minority, children whose first language is not English and who are in a family where a language other than English is spoken;
3) administer a longer home language survey to entrants who speak a language other than English to determine how limited the child is in English and how proficient the child is in the non-English language;
4) identify children who are limited in English who will be interviewed by a staff person trained to identify children who are ELL and to assess their needs;
5) assign ELL child to self-contained classroom of English Language Learners or to mainstream classroom with ESL pullout, depending on assessed need and number of children.

Children would never be reclassified because their identification would not be as limited-English-proficient, but as language minority, a classification that is not dependent on misleading test scores. This is an identification they would have all their school careers and it would avoid the impossible task of deciding when a child is, or is not, limited in English. The instructional

staff would give children from language minority families, the academic support they need as is true of any other child in the school system.

I have two recommendations regarding program characteristics for language minority children. First, language minority children who are placed in a self-contained classroom should be taught in English if the goal is to reach the highest level of English language ability. Scientific research indicates that language minority children generally have higher achievement if they are taught in English rather than their native tongue (Rossell & Baker, 1996). Second, even when taught in English, English Language Learners should not be in a self-contained classroom (as in the Chinese, Russian, and Haitian bilingual programs) for more than a year. Such time limits are necessary because just as we do not know how to tell if a child is initially limited in English, we do not know how to determine when a child is no longer limited in English.

If a fluent-English-speaking child is misclassified as ELL and placed in a self-contained classroom of second language learners, he or she will be slowed down by the children who truly do not know English. If a formerly English Language Learner becomes proficient in English while in a self-contained classroom, teachers and unrealistic exit criteria will tend to keep them in that environment, and they too will be slowed down. Therefore, a time limit on enrollment in a self-contained classroom, even one taught in English, must be imposed to protect English Language Learners from being harmed by good intentions.

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II. Dismantling Bilingual Education: The Impact of Proposition 227 in California

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Dismantling Bilingual Education: the Impact of Proposition 227 in California

Introduction

Perhaps no other educational policy is as misunderstood and the subject of as much venom and passion as bilingual education. Nowhere has this been more evident than in California, which had a 26 year history of bilingual education that was supposed to end with the passage of Proposition 227 on June 2, 1998. Proposition 227 required that

> ...all children in California public schools shall be taught English by being taught in English. In particular, this shall require that all children be placed in English language classrooms. Children who are English learners shall be educated through sheltered English immersion during a temporary transition period not normally intended to exceed one year. [13]

Sheltered English immersion—instruction in English in a self-contained, sheltered, classroom of English Learners—was supposed to replace bilingual education, the program which had been required by California law (the Bilingual Education Act of 1972 and the Chacon-Mascone Act of 1976), until it sunsetted in 1989. Bilingual education continued to be enforced by the California Department of Education, despite the 1989 expiration, until Proposition 227 passed in 1998.

The purpose of this paper is to analyze the implementation of Proposition 227 in California and its outcomes. In doing so, the paper analyzes: 1) California law on instruction for English Learners before and after Proposition 227, and the interpretation of Proposition 227 by school districts; 2) the process by which a child is designated limited-English-proficient or English Learner, the characteristics of these students, and trends in the number of students redesignated fluent-English-proficient; 3) bilingual education enrollment before and after Proposition 227 and the characteristics of the students enrolled; 4) testing rates for all English Learners and English Learners enrolled in bilingual education; and 5) the impact of bilingual education on achievement in California and nationwide.

Data

Most of the quantitative data on English Learners and programs for them in California schools was downloaded from the state department of education web site: www.cde.ca.gov/demographics. In describing statewide trends, all schools were analyzed and no sampling was done. Data on the number of English Learners tested in reading and math and their achievement on the statewide test, the Stanford 9 (SAT9), were downloaded from the California Department of Education (CDE) web site: http://star.cde.ca.gov. Test scores by program are available from the state web site http://www.eddataonline.com/research/ for Spring 1998 through Spring 2001, but the program category is not reliable before Spring 2001 (and may not be reliable in that year either). In earlier years, the bilingual education category

[13] The entire text of Proposition 227 can be found at http://www.onenation.org/article.cfm?ID=4267.

includes English language programs. Because there is only one year of even potentially reliable program data, this report does not contain analyses of English Learner achievement by program from that dataset. Analyses of achievement are by school controlling for the characteristics of the English Learners in the school.

More than 300 classrooms were observed and a smaller number of teachers and principals were interviewed in California, Minnesota, New York City, and Massachusetts over the last decade and a half. The California classrooms constitute more than half of the sample, and were observed from Fall 1986 through Fall 2001.

Eight school districts (Oceanside, Los Angeles, San Diego, San Francisco, two San Francisco Bay Area school districts, and two Los Angeles Area school districts[14]) and 170 classrooms in 29 elementary and junior high schools were observed (assisted by Carol Janes) in Spring 1999.[15] Of the 170 classrooms, 97 were observed in seven districts (all but Oceanside) in Spring 1999, during the first year of Proposition 227. An additional 73 classrooms were observed in Oceanside, Los Angeles, and San Diego in Fall 2001. The schools in Oceanside, Los Angeles, San Diego, and San Francisco were selected randomly from among those with large numbers of Hispanic (or in the case of San Francisco, Chinese and Hispanic) English Learners. Thus, observations are representative of the school districts where bilingual education once flourished—those with large numbers of Spanish speaking English Learners—and also of the few schools with Chinese bilingual education programs.

The total number of teachers and administrators interviewed is approximately 66 teachers, 39 building administrators, one superintendent, and one associate superintendent. In general, teachers were interviewed only if they had some free time before or after the classroom observations or school visit. At least one administrator, and sometimes two, was interviewed in every school.

Programs for English Learners

During the last two and a half decades in California and the rest of the U.S., there have been three very different instructional programs for limited English-proficient students or English Learners: 1) regular mainstream classroom instruction with English as a Second Language (ESL) instruction in a pullout setting; 2) structured immersion (called sheltered English immersion in Proposition 227)—all English instruction in a self-contained classroom consisting only of second language learners, and 3) native tongue instruction characterized by initial literacy in the primary language and subject matter in the primary language with English language instruction. All three programs have been called bilingual education by national, state and local administrators, legislators, reporters, and educators, although only the last program actually is bilingual education.

This paper defines bilingual education as native tongue instruction with initial literacy in the primary language and subject matter in the primary language. English is taught as a

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[14] Los Angeles and Bay area school districts A and B are unnamed because they are so small that to name them would compromise the anonymity of the schools visited.

[15] The author personally observed 161 classrooms in Spring 1999 and September 2001.

subject, for about an hour a day initially. The amount of English is typically increased over time, but students are not supposed to be transitioned completely to English until they have mastered native tongue literacy.

Bilingual education is defined in this way because this is the program described in the facilitation theory that is the foundation of bilingual education (Cummins 1980a, 1980b). It is also the definition used by the California Department of Education. The facilitation theory has two parts: 1) the "threshold" hypothesis, which states that there is a threshold level of linguistic competence in the first language that a bilingual child must attain in order to avoid cognitive disadvantages, and 2) the "developmental interdependence" hypothesis that states that the development of skills in a second language is facilitated by skills already developed in the first language. According to this theory, children must learn to read and write in their native tongue, and learn subject matter in their native tongue. They only begin English (second language) literacy after they have mastered native tongue literacy. If a "bilingual education" program does not follow this process, it is not implementing the rationale for native tongue literacy and the child is therefore not supposed to benefit from the program. Hence, the program is not "true bilingual education" or "bilingual education according to the theory."

Sheltered English immersion is English instruction in a self-contained classroom of English Learners. It is supposed to be taught at a pace and with techniques appropriate for children who are learning English. However, observations and interviews indicate that it is often called bilingual education by school systems if the teacher is bilingual, the students are ethnically or linguistically similar and are in a separate classroom from the fluent English speakers, and the classes are formed with the declared intent of providing native tongue instruction. In some of these classrooms, there may be some instruction in a non-English language as an enrichment, but it is not a means of subject matter instruction nor of acquiring literacy. The Chinese bilingual education classes, for example, are actually structured immersion, even when some Mandarin is taught as an enrichment.[16]

Occasionally ESL pullout programs are also called bilingual education if the students receiving the ESL instruction are from the same language background and the teacher is bilingual in at least one of the languages spoken by the students. The fact that these so-called bilingual education classrooms are actually taught in English is ignored by the administrators, the policymakers, the parents, and the advocates of bilingual education—indeed, the latter usually *deny* it. The advocates apparently see a political advantage in casting as wide a net as possible to include many different types of programs under the label bilingual education. As a result, statistics on bilingual education enrollment will consistently overestimate the number actually receiving native tongue instruction according to the theory.

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[16] The author has been in numerous Chinese bilingual education classes across the U.S., which included the teaching of Mandarin for a few hours a week. Many people would argue that this justifies calling the program bilingual education, although Mandarin might be the language of only a few of the ethnically Chinese English Learners in the program. This paper would argue that since Mandarin is not the native tongue or primary language of the students it is being taught to, it is not bilingual education according to the theory. Even if it were the language of all the students, it is still not being taught according to the theory because the students learn to read and write initially in English (not the native tongue) and then receive some Mandarin instruction as an enrichment after having attained literacy in the second language.

How School Districts Interpreted Proposition 227

Proposition 227 passed on June 2, 1998, three months before it was to be implemented, with a 61 percent majority. Seven weeks later on July 23, 1998, the state board issued emergency regulations to guide school districts in implementing Proposition 227. These became permanent in November 1998. Proposition 227 was immediately challenged in court, but it has survived every legal challenge.[17]

Proposition 227 has been dramatically changed by the State Board, and the school districts as evidenced by guidelines issued by Los Angeles Unified, San Diego Unified, and San Francisco Unified for their principals. These documents indicate that the state board and the districts: 1) have redefined a sheltered English classroom so it is not only a self-contained classroom of English Learners taught in English, but also a mainstream classroom with ESL pullout for English Learners, as well as a self-contained classroom of English Learners receiving up to 30 percent of instruction in Spanish; 2) allowed teachers to recruit children for waivered bilingual classrooms although the initiative says parents must initiate this process; 3) allowed parents to mail in their requests for waivers although the initiative requires a personal visit; 4) failed to require detailed documentation of the need for a bilingual education classroom as the initiative requires; and 5) changed the requirement of a year in a sheltered English immersion classroom from a maximum to a minimum. In addition, the school districts are only requiring that a child spend 30 days in an English Language classroom when he or she first enrolls in school although the initiative says 30 days each year.

San Diego's interpretation and practice comes close to subverting the intent of the law. Spanish speaking English Learners in many sheltered immersion programs in San Diego schools are being taught to read and write in Spanish in apparent violation of the law. Indeed, in visits to two San Diego schools in September 2001, revealed that kindergarten Spanish speaking English learners who had just entered school and knew no English were being assigned to classrooms called "waivered bilingual" during the first 30 days and were being instructed almost entirely in Spanish during this time period in violation of the law which says they must be in a sheltered English immersion program during their first 30 days in school.

Thus, the law has been dramatically changed by administrative fiat and with little protest. Furthermore, whereas Proposition 227 eschewed tests and defined an "English learner" as someone "who is not currently able to perform ordinary classroom work in English," the State Board of Education has changed the standard for defining a child as an English Learner to "as measured by any of the state-designated assessments approved by the California Department of Education, or any locally developed assessments."

Designating a Child Limited-English-Proficient or English Learner

Not only is there confusion and disagreement over what bilingual education is, what structured English immersion is, and what Proposition 227 requires, but there is confusion and disagreement over what an English Learner (i.e. limited English proficient), is. Children who

[17] San Jose and San Francisco are not implementing it because of conflicting court orders.

come from a home where a language other than English is spoken are language minority children. But, not all language minority children are designated English Learners.

The process of designating a student as an English Learners is basically the same throughout the United States, although the specific instruments used in the process vary from school district to school district. The process in California, which did not change with the implementation of Proposition 227, is reducible to two steps: (1) a home language survey is administered to all students to identify the pool of potential English Learners; and (2) the students identified in the home language survey as potentially limited in English are tested on several measures of academic performance in English, and sometimes in their native tongue, and classified accordingly.

The home language survey classifies a child as a language minority child who is potentially an English Learner if a parent's response to the languages used in the home is *any* language other than English. Children so identified must then take an English proficiency test, which is both oral and written, if the child is expected to be literate, but only oral if the child is not expected to be literate. The test is normed on an English speaking population and a test score is selected, typically between the 20th and the 50th percentile, or a specific ordinal score that is equivalent to a score in this range (e.g. 5 on a scale of 1 to 10), that defines a student as an English Learner. Across the entire norming population of English speakers, any criterion chosen will classify children who are fluent in English as English learners (see Rossell & Baker, 1988).

If the designation criterion is the 36th percentile, or its equivalent on an another scale, across all schools we would expect at least 36 percent of the norming population of English proficient students to be designated "limited in English" or "English Learners" and to never be redesignated so long as they are making grade level progress. Indeed, were it not for the home language survey, many fluent English speaking, and even English monolingual, children would be designated English Learner by the tests that are used (Perlman & Rice, 1979).

Redesignation Rates Pre and Post Proposition 227

Table 1 shows the number of English learner students in each year from 1981-82 to 2001-02. The annual redesignation rates in the 1990s before Proposition 227 averaged six percent. This seems abysmally low. But if we follow a kindergarten cohort that began school in 1992-93 and assume that the same students are in the English Learner population each year (which is an optimistic, false assumption), at least 47 percent of the English Learner population are redesignated by 6th grade, almost what you would expect if the tests were given to English monolingual students. Since it is not the same students over time, the annual redesignation rates are actually better than you would predict from the exit criteria used by most school districts.[18]

[18] Sixth grade seemed to be a good point to end this intellectual analysis because the error in the estimate is greater with each successive grade and because most English Learners, and most students enrolled in bilingual education, are in elementary school.

Ironically, the annual redesignation rates had been increasing steadily in the years before Proposition 227. If we project the trend from 1992-93 to 1997-98 forward to the next three years after 227, the percentage redesignated in 2000-01 is only one point higher than what would be predicted without 227. In 2001-02, the test changed to a statewide test, the CELDT, and so redesignation rates no longer mean the same thing since the criterion has changed. So long as the same redesignation criteria are used, there is a ceiling on how high the redesignation rates can go. As noted above, if the standard being used is the 36th percentile, or its equivalent on an ordinal scale, and the English Learner population being assessed is similar to the norming population of English proficient students, you would expect at a minimum that 36 percent would never get reclassified. Since the English Learner population being assessed is poorer and has fewer resources than the norming population of English proficient students, you would expect even higher percentages— perhaps half— to never get reclassified. If we convert this total redesignation rate to annual redesignation rates, six to 10 percent a year redesignated is about what you would expect. It is certainly not evidence that programs for English Learners are failing to educate them, whether it is bilingual education or sheltered English immersion.

Table 1

Redesignation Rates for English Learners and Cumulative Redesignation Rates for 1992-93 Kindergarten Cohort in California, 1981-82 to 2001-02

Year	TEST	Number of EL Students	% of K-12 Enrollment	# of Students Redesignated FEP	% Redesignated of Previous Year's ELs	1990 Cohort School Grade	Cumulative % Redesignated FEP w/ Assumption of Same Students in Cohort	Projected from Pre-227 Trend ('92-'93 to '97-'98)
2001-02	CELDT	1,559,248	25.4%	117,450	7.8%			7.0%
2000-01	*	1,512,655	25.0%	134,125	9.1%			7.0%
1999-00	*	1,480,527	24.9%	112,214	7.8%			7.0%
1998-99	*	1,442,692	24.7%	106,288	7.6%			7.0%
1997-98	*	1,406,166	24.6%	96,545	7.0%	7th	47.5%	
1996-97	*	1,381,393	24.6%	89,144	6.7%	6th	41.0%	
1995-96	*	1,323,767	24.2%	81,733	6.5%	5th	34.3%	
1994-95	*	1,262,982	23.6%	72,074	5.9%	4th	27.8%	
1993-94	*	1,215,218	23.1%	63,379	5.5%	3rd	21.9%	
1992-93	*	1,151,819	22.2%	54,530	5.1%	2nd	16.4%	
1991-92	*	1,078,705	21.1%	55,726	5.6%	1st	11.3%	
1990-91	*	986,462	19.9%	49,001	5.7%	Kind.		
1989-90	*	861,531	18.1%	53,223	7.2%			
1988-89	*	742,559	16.1%	54,482	8.4%			
1987-88	*	652,439	14.5%	57,385	9.4%			
1986-87	*	613,224	14.0%	53,277	9.4%			
1985-86	*	567,564	13.3%	55,105	10.5%			
1984-85	*	524,076	12.6%	50,305	10.3%			
1983-84	*	487,835	11.9%	47,503	10.4%			
1982-83	*	457,540	11.2%	52,504	12.2%			
1981-82	*	431,449	10.7%	57,336	15.2%			

Source: State Department of Education, Language Census Reports for California Schools, www.cde.ca.gov.
* District choice of test used for redesignation from state approved list.

The apparently small improvement in redesignation rates since Proposition 227 is actually more impressive than it looks at first glance. The 24 point decline in elementary English Learners enrolled in bilingual education produced a 7 _ to 15 point increase in elementary English Learners redesignated. The lower number is the cumulative elementary school (seventh grade) impact of the one point difference between the actual and the projected and the higher number is the cumulative difference between the 7 percent before Proposition 227 and the 9.1 percent in spring 2001. By the standards of educational research, even the smaller number is an impressive impact. It means that for every 3.2 point decline in the percentage enrolled in elementary bilingual education, the state gets a one point increase in the percentage of elementary English Learners redesignated through 2000-01.

Beginning May 14, 2001, all school districts were required to use the same English proficiency test, called the California English Language Development Test (CELDT), to determine if a language minority child is an English Learner. The test is published by CTB/McGraw Hill and is purported to be an adaptation of the LAS test to the new California English Language Development (ELD) standards.[19] For a while, the new CELDT will make the evaluation environment worse. School districts that had been using English proficiency tests with higher "pass" rates will see a decline in their redesignation rates with the new test. School districts that had been using a test with a lower "pass" rate will see their redesignation rates improve with the new test.

In addition, it appears that the California Department of Education is asking school districts to raise their redesignation criterion. According to the 2000-2001 Coordinated Compliance Review Training Guide, the redesignation standard is now to be the average for native speakers in the school. Only *half* of all native English speakers in a school will be at or above their average for the school, but the state is now asking school districts to require *all* English Learners to be above the average for native English speakers before they can be considered fluent English speaking. Raising the redesignation criteria will make redesignation rates decline. Since the test has also changed, it will not be possible to compare redesignation rates with the CELDT to redesignation rates prior to that.

In addition, the essential problem remains, English proficiency tests, including the CELDT, are normed on English speaking students and cannot tell the difference between a student who does not know English and a student who does not know the answer. Not all fluent English speakers can achieve the score that designates a fluent English speaker and we should expect even fewer English Learners to do so since they come from poorer families with fewer resources.

[19] Information on the testing program and ELD standards can be found at http://www.cde.ca.gov/statetests/eld/eld.html.

Enrollment in Bilingual Education Before and After Proposition 227

The state conducts an annual language census (R30-LC) to determine the program enrollment of LEP or English Learner students. The census asks for the following data: number of English Learner (EL) students (formerly known as limited-English-Proficient or LEP) and Fluent English-proficient (FEP) students in California public schools (K-12) by grade and primary language other than English; number of English Learners enrolled in specific instructional settings or services by type of setting or service; number of students redesignated from English Learner to Fluent-English-Proficient from the prior year; and the number of bilingual staff persons providing instructional services to English Learners by primary language of instruction. With the passage of Proposition 227, a whole new set of program categories appeared above the old categories in the state language census. The new program categories are: 1) structured English immersion (i.e. sheltered English immersion); 2) alternative course of study (bilingual education, other programs, and charter schools); 3) English language mainstream classroom with additional services-student meets criteria; 4) English language mainstream classroom with additional services-parental request; and 5) other instructional settings. Pre- and post-comparisons, however, can only be made with the old categories.

Figure 1 shows that in the year before Proposition 227, 39 percent of elementary English Learners were in bilingual education compared to only 10 percent of secondary students. To some extent this reflects the differential in the English Learner percentage in elementary (31 percent) and secondary (18 percent) school. The differential is caused by the bulge of immigrant children in kindergarten that is the accumulation of those who were born in the U.S. into non-English speaking families or who moved here at 1, 2, 3, or 4 years of age. In addition, the English proficiency tests that are used to classify a student as English Learner are easier for older children to pass than for younger children. (See, for example, Perlman & Rice, 1979.)

But the difference in bilingual education enrollment by school level is greater than the difference in English Learner enrollment. It is also a reflection of the fact that students are more likely to be literate in their native tongue at the secondary level than at the elementary level, which diminishes the motivation for bilingual education.

At both school levels, most English Learners were enrolled in an English speaking instructional program prior to Proposition 227. This is also true of most Spanish speaking English Learners. There were 1,140,197 Spanish English Learners in 1997-98, but only 409,879 students of all languages enrolled in bilingual education. Even if the only children enrolled in programs labeled bilingual education were Spanish speakers, at most only 36 percent of Spanish English Learners could have been enrolled in bilingual education before Proposition 227. Since we know that not all of the students enrolled in programs labeled bilingual education are Hispanic, the percentage of Hispanic English Learners enrolled in bilingual education is probably several points lower than 36 percent.

At the elementary school level, there were 770,633 Spanish speaking English Learners in the state in 1997-98. However, there were only 363,568 elementary students enrolled in bilingual education. Even if we were to assume that all the elementary English Learners

enrolled in bilingual education were Spanish speakers, at most only 47 percent of the elementary Spanish speaking English Learners were in bilingual education.

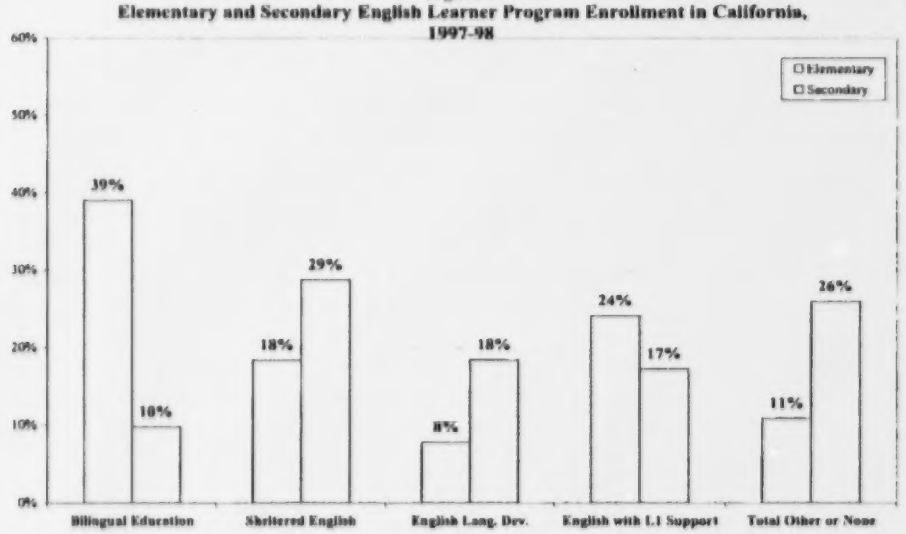
At the secondary school level, there were 369,608 Spanish speaking English Learners in the state in 1997-98. However, there were only 46,311 secondary English Learners enrolled in bilingual education. Even if we assume that all the secondary English Learners in bilingual education were Spanish speakers, at most only 13 percent of secondary level Spanish speakers could have been enrolled in bilingual education.

Thus, critics of bilingual education have most likely exaggerated its aggregate harm and supporters have most likely exaggerated its aggregate benefit to English Learners, including Spanish speaking English Learners, since only a minority of English Learners was enrolled in bilingual education prior to Proposition 227.

Which Language Groups Were Enrolled in Bilingual Education?

One of the problems with the facilitation theory and with California state law before Proposition 227 is that it ignores the great variation in written language. In particular, the theory and the law are silent on how you would teach Asian children to read and write in their native tongue and why you would want to do that since so few of the skills would be transferable to English. The vast majority of Asian languages use an ideographic system of writing, rather than an alphabetic or phonetic system, and have no similarity in appearance to English,[20] thus reducing the number of transferable skills, such as sight recognition of words, sounding out of words, and so forth.

Figure 1
Elementary and Secondary English Learner Program Enrollment in California, 1997-98



[20] Two exceptions are Hmong and Vietnamese, whose written languages were created by westerners and so have a Roman alphabet.

Ideographic languages also take much longer to master than English. In other words, learning to read in the native language, if it is ideographic (e.g. Chinese or Japanese), may actually be harder than learning to read and write in the second language, if the latter is English or another phonetic, alphabetic language. As a result, there appear to be no bilingual education programs that actually teach initial literacy in the native language for ideographic languages such as Chinese, Japanese, and Korean, although many of them are taught in self-contained classrooms, are called bilingual education, and receive bilingual education funding.

In addition, for speakers of non-Roman alphabet languages (such as Hebrew, Arabic, the Indian dialects, Russian, Armenian, and Khmer) bilingual education programs also do not teach initial literacy in the native language, though the alphabet is phonetic. The teachers interviewed for this study say that it is too difficult or distracting to teach initial literacy, particularly to young children, in a language with a different alphabet from English. The literature, however, is silent on this issue. This is also true of the legislation and regulations in California and every other state.

Observations and empirical analysis indicate that Spanish speakers are virtually the only English Learners receiving bilingual education according to the theory because they are typically the only ones that fulfill all the conditions for receiving it: 1) there are enough of them to fill a classroom by combining two grades; 2) they have a native tongue that is a phonetic language with a roman alphabet; 3) they are likely to have a teacher who is fluent in their language; 4) all the students in the classroom speak the same dialect since Spanish has no important dialects; 5) there are published textbook materials in the native tongue written for the U.S. curriculum; 6) the dialect or language is the official language of one or more large countries.[21]

The Waiver Process

Although Proposition 227 allowed parents to request a waiver for their child to be in a bilingual education program, the extent to which there was enough demand to maintain a bilingual education program depended on the size of the Spanish speaking English Learner population and the organization of the school. Parents in schools with small numbers of Spanish speaking English Learners, or in school districts which had made a districtwide decision to adopt sheltered English immersion, may not even have been aware of their right to apply for a waiver since there was little or no likelihood of having enough students to maintain a bilingual education program and thus no motive for the school to recruit parents. When pressure from above is absent, parental demand is low.[22]

Visiting the school to sign a waiver is not an idea that typically originates with the parent. Interviews suggest that bilingual education is like medical care. Teachers, like doctors,

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[21] Occasionally, other Roman alphabet language groups will have the numbers to fill a classroom—in California this is sometimes true of Vietnamese and Portuguese speakers—but even in these cases, we have never seen a true bilingual education program offered in either of these languages. Again, by true bilingual, we mean initial literacy is in the native tongue and the student is transferred to English only after native tongue literacy is mastered.

[22] According to Kitchen (1999), 32 percent of school districts reported that they did not inform parents of their right to request a waiver.

create supply by the criteria they use to define a child as needing treatment and they create demand by telling the patient what treatment he or she needs. In every school that Carol Janes or the author visited in Spring 1999, teachers explained that they had "worked very hard" to get parents to sign waivers. They held daytime and evening meetings during the 30 day period and called parents to convince them that their child would be better off in the bilingual education program that had been recommended for them the previous year.

This process is diagrammed in Figure 2 as a supply and demand model of creating waivered classrooms. The first step in creating a waivered classroom is that there must be 20 or more English Learners of a single language in a single grade in a district that has not made a districtwide commitment to English instruction. Just as Hispanic students were the only ones receiving true bilingual education before Proposition 227, they are the only ones being waivered after 227 because they are the only language group that has the numbers to fill a classroom and a language that is similar enough to English that numerous skills are transferable.

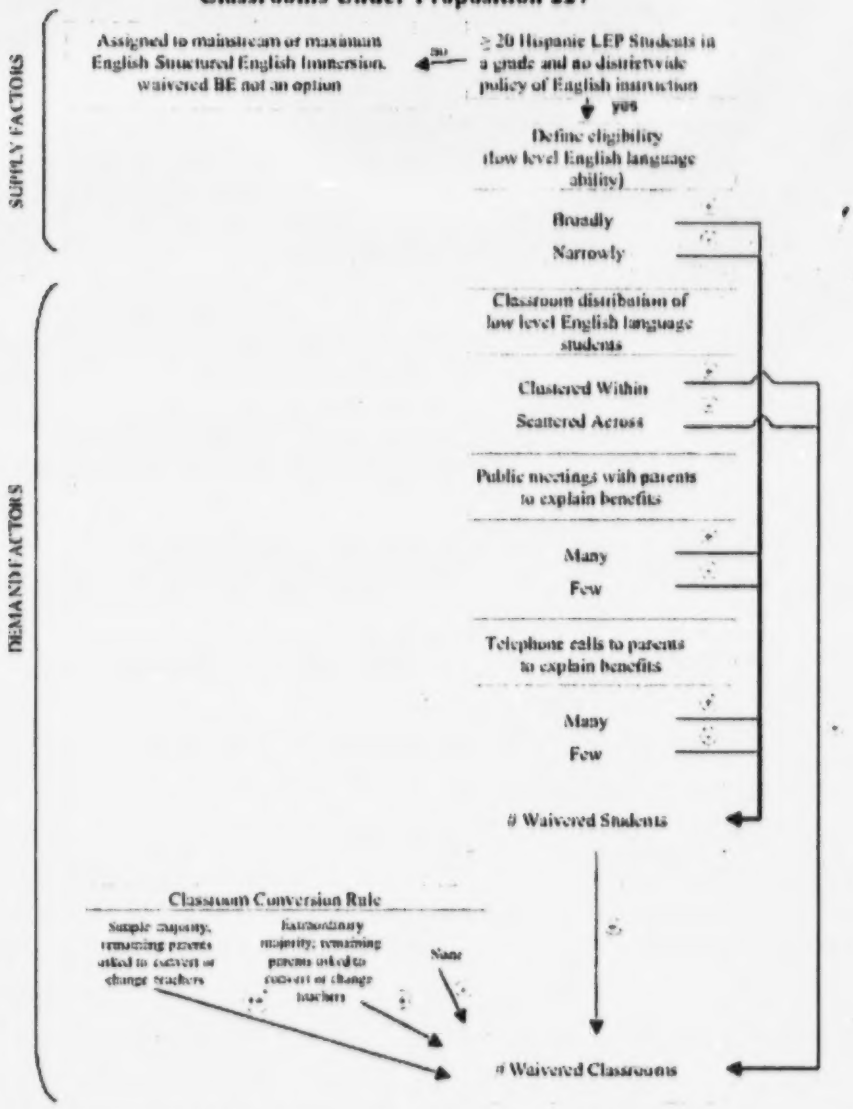
Figure 2 also depicts how schools create supply by how they define eligibility to be waivered. Although it is the district that defines who is English Learner, it is the school that decides who is to be *recruited* for a waivered bilingual education class. They can create greater or fewer numbers in such classes by the level of English language achievement they choose as the criterion for assignment.

In addition, the classroom distribution of low achieving students can affect how many students are waivered. If the sheltered English immersion classes are formed on the first day so that the lowest level Spanish speaking English Learners in a grade are in the same classroom then it is much easier to convert the whole classroom to waivered bilingual on the 31st day. If the lowest level Spanish speaking English Learners are scattered across classrooms, it is harder to convert them to waivered bilingual because it means another reorganization of the classrooms.

The next two variables in the supply-demand model shown in Figure 2 reflect the extent of outreach to parents. Outreach includes the number of public meetings with, and individual telephone calls to, parents to explain the benefits of bilingual education. All of these variables will influence the number of *students* who are waivered.

But the number of students who are waivered does not necessarily translate into waivered classrooms. The latter also depends on the number of Hispanic English Learners in a school and the classroom conversion rule. There are two possible classroom conversion rules. The first is that when a simple majority of waivered students is obtained for a given teacher and classroom, the other parents are called and told that if they do not sign a waiver, their child will have to change teachers. The second possibility is that the telephone calls are not made until an extraordinary majority of waivered students is obtained. These telephone calls are very effective in converting additional students because most parents do not want their child's education to be disrupted by changing classrooms and many of them care more about that than they do about the language of instruction, if they even understand the issue of the language of instruction.

Figure 2
A Supply and Demand Model of the Process of Creating Waivered Bilingual Education Students and Waivered Bilingual Education Classrooms Under Proposition 227


SUPPLY FACTORS
DEMAND FACTORS
Assigned to mainstream or maximum English Structured English Immersion, waivered BE not an option
no
≥ 20 Hispanic LEP Students in a grade and no districtwide policy of English instruction
yes
Define eligibility (low level English language ability)
Broadly
Narrowly
Classroom distribution of low level English language students
Clustered Within
Scattered Across
Public meetings with parents to explain benefits
Many
Few
Telephone calls to parents to explain benefits
Many
Few
Waivered Students
Classroom Conversion Rule
Simple majority, remaining parents asked to convert or change teachers
Extraordinary majority, remaining parents asked to convert or change teachers
None
Waivered Classrooms

Interpretation: School staff create supply and demand, modified by parent negotiation

Thus, the number of bilingual waivered students and bilingual waivered classes is not necessarily indicative of parent support for bilingual education. Rather it seems to reflect staff support for bilingual education and to some extent parent support for staff.

In many schools it was not possible to form entire classrooms of waivered students. Parents were then asked for permission to have the child they had just agreed to be waivered placed into an English language classroom instead. Interviews reveal that in every instance the parents agreed. According to the teachers and principals, parents typically look to them as their authority and most of them are willing to comply with whatever educational decision is made for their child by these authorities whether it is bilingual education or all-English instruction. It is a minority of parents who have independent opinions on educational issues, even on the language of instruction.

One interesting finding from the 1999 teacher interviews conducted in April and May is that the teachers in Spanish bilingual education classes believed they were using more English than in the past. Two reasons were given for this. First, the Proposition 227 vote expressed the preferences of the electorate for a greater emphasis on English. Many teachers stated they were being responsive to their clients by increasing the English in bilingual education. Second, because there is no guarantee that a waivered class can be assembled for the next grade in the following year, teachers in bilingual education classes told me they were preparing their students for the possibility that they would have to go into an English language classroom because there was no bilingual education classroom available.

In Fall 2001, several of the former bilingual education teachers, who were now teaching in sheltered English immersion classrooms, were asked how this program compared to bilingual education and whether they would ever go back to bilingual education. Not a single teacher said they would go back to bilingual education if they were given a chance. All preferred sheltered English immersion, despite the fact that they thought it was harder work for them as teachers. A recurring theme was that "bilingual education was a good theory, but in practice it just didn't work very well." One problem that bilingual education had to deal with was the fact that because many students change their residence from year to year, and even within a year, they could find themselves in bilingual education in one school, all-English in the next, and back to bilingual education in a third school. Another problem was the discontinuity between the bilingual education curriculum and the mainstream classroom curriculum.

In general, interviews indicate that, despite some residual uneasiness about the future and an unwillingness to renounce the theory of bilingual education, former bilingual education teachers teaching in sheltered English immersion programs strongly support the program. They perceive themselves as giving their students the nurturing environment that they previously believed only a bilingual education program could provide, while at the same time providing an adequate exposure to English that they worried was lacking in the bilingual education programs they used to teach in.

Trends in Bilingual Education Enrollment

The trends in bilingual education enrollment, using the old program category, are shown in Figure 3. The percentage of English Learners enrolled in bilingual education was about 33 percent until 1993-94 when it declined by 5 percentage points to 28 percent. In 1998-99, it plummeted to 12 percent with the implementation of Proposition 227, but not to zero as many had hoped. In 1999-00, it only declined one more percentage point to 11 percent where it remained in 2000-01. In 2001-02, it declined a bit further to a little less than 10 percent.

The decline for elementary schools is more dramatic, but again bilingual education was not eliminated. As shown in the top line of Figure 3, the percentage of elementary English Learners enrolled in bilingual education dropped by 24 points to 15 percent in 1998-99, rose slightly to 16 percent in 1999-00, and went back to 15 percent in 2000-01. In 2001-02, it declined a bit further to 13 percent.

Figure 4 compares the percentages of elementary English Learners enrolled in each of the six programs for English Learners for two years before and four years after Proposition 227 using the old categories. About 7 percent of elementary English Learners are enrolled in ESL pullout (English Language Development), another 9 percent are receiving no services or some other service,[23] and this has changed very little since Proposition 227. The big increases have occurred in sheltered English (SDAIE) and English with L1 support. Although in principle Proposition 227 requires that everyone not in bilingual education be enrolled in sheltered English, according to these data only 39 percent of elementary English Learners are enrolled in sheltered English immersion.

Figure 5 displays the same analysis for secondary students. About 10 percent of secondary English Learners were enrolled in bilingual education before Proposition 227 and about 3 percent after. There has been a small increase in sheltered subject enrollment, but only a little more than a third of secondary English Learners are enrolled in the sheltered English program mandated by Proposition 227.

Figures 4 and 5 demonstrate that bilingual education after Proposition 227 is essentially an elementary school program. There are very few secondary students enrolled in bilingual education, despite the fact that Proposition 227 makes it legal for school districts to offer bilingual education to students older than 10 without any documentation of special need as must occur with younger children.

Achievement Testing Rates by Program

One of the biases that evaluations of programs for English Learners have to overcome is that a much smaller percentage of English Learners are tested in bilingual education than in English instructional programs. One reason given by advocates and administrators is that it is unreasonable to administer English language tests to students who are learning literacy in their native tongue. This may be true but it gives the bilingual education programs an unfair advantage over all-English programs because a much larger number of low achieving students

[23] The state only began using "other services" in 1998-99. Prior to that there were two residual categories called "withdrawn" and "none." It is not clear which category "other services" might have been put in.

will not be included in the evaluation of the bilingual education program than is the case with the all-English program. It is the lowest scoring students who are deemed not ready to be tested (see Bali, 2000; 2001).

Figure 3
Percentage of English Learners Enrolled in Bilingual Education (Old Category) in California, 1989-90 to 2001-02

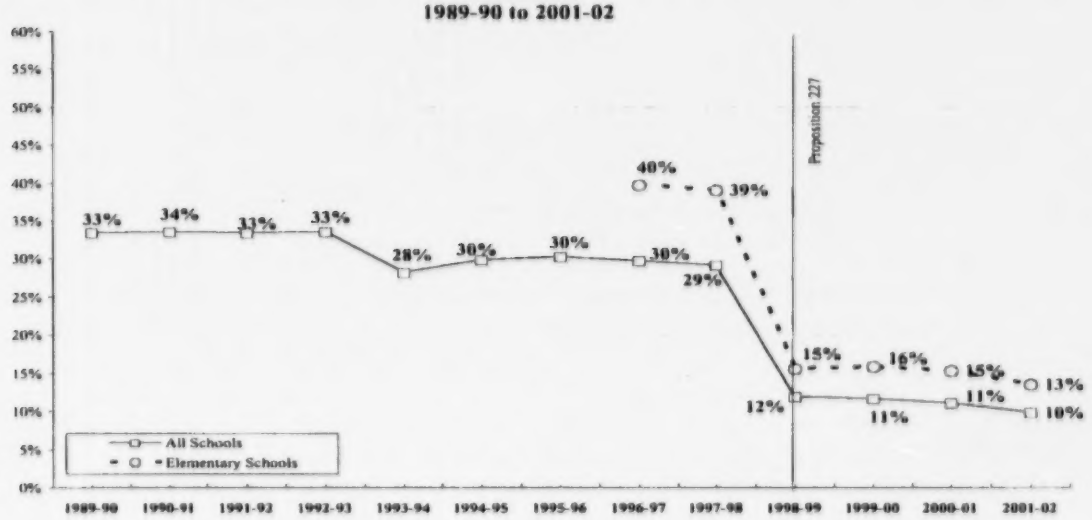


Figure 4
Percentage of Elementary English Learners Enrolled in Each Program Model (Old Categories) in California, 1997-98 to 2001-02

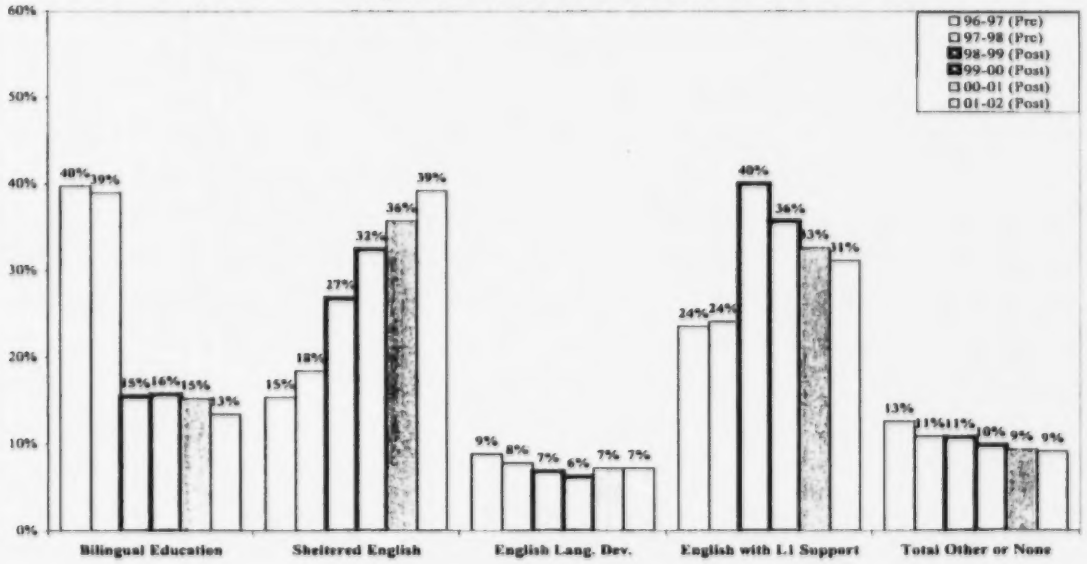
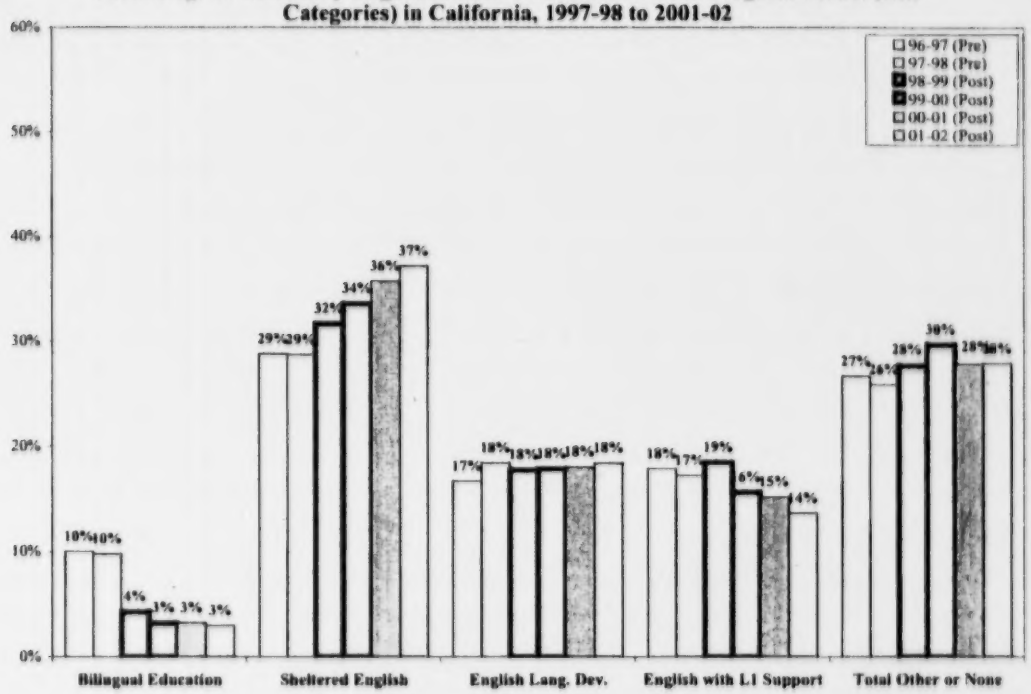


Figure 5
Percentage of Secondary English Learners Enrolled in Each Program Model (Old Categories) in California, 1997-98 to 2001-02



This problem exists in California with English Learners as a group and bilingual education in particular. According to state regulations, all English Learners must be tested on the new statewide Stanford 9 tests which were first administered in 1997-98, the year before Proposition 227. However, only 68 percent were tested in 1997-98 in reading and this has only increased to about 84 percent in 2000-01. Moreover, there is considerable variation in testing rates between schools and school districts.[24]

This is also true for math testing rates. Although math is less language based than reading, the testing rates for English Learners in math are only a few points higher than for reading. Only 72 percent of English Learners were tested in math in 1997-98 and this only increased to 86 percent in 2000-01.

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[24] The testing rates are calculated by dividing the number of English Learners tested in reading in a school in May from the STAR data file and the number of English Learners enrolled in the school as reported in the March language census. The language census enrollment could have been collected any time from September to March. Two rules for dealing with the incongruities presented by the time differences were constructed. If the number of English Learners tested was greater than the number enrolled, the number tested was set to the number enrolled. If the number of English Learners was greater than zero, and the number tested was blank, the number tested was set to zero. This latter rule was constructed because none of the schools ever had zero tested. Schools only had a blank or a number greater than zero. This only affected a few schools and English Learners.

The cause of this in California is threefold. First, there is a loophole in the state law — parents have the right to remove their child from testing. Second, special education students may be excused from testing so an English Learner can be classified as special education and excused on that basis. Third, English Learners tend to have lower socioeconomic status and lower socioeconomic status students tend to miss more school and thus the tests that are given in school.

In 1997-98, 29 percent of the districts tested less than half of their English Learners in reading and 27 percent tested less than half in math. Although testing rates have gone up by about 15 points since then, in 2000-01, 14 percent of school districts in California tested less than half of their English Learners in reading and seven percent tested less than half in math. Under these circumstances, the kind of casual comparisons that are made in the press of achievement pre and post Proposition 227, and between school districts, are risky.

In addition, the bias in the achievement data is still in favor of bilingual education. Table 2 shows a regression equation predicting the percentage of elementary English Learners tested in reading and in math in California schools by the extent of enrollment in bilingual education in that school and controlling for school poverty and size. This is done for each of the four years for reading and the 2000-01 year for math. The number enrolled in bilingual education is statistically significant in every year.

Figure 6 solves the equations in Table 2 for three categories of the extent of bilingual education enrollment—no bilingual education, bilingual education greater than 120 students, and bilingual education greater than 240 students—and the average poverty and school size. In 1997-98, the equation estimates that the percentage of English Learners tested in reading is 70 percent in a school with no bilingual education enrollment compared to 67 percent in a school with more than 120 students enrolled in bilingual education. This is further reduced to 63 percent when the bilingual education enrollment is greater than 240. The testing gap between schools with no bilingual education enrollment and 240 students enrolled in bilingual education has declined in 2000-01 to only four percentage points for both math and reading.

These data suggest that bilingual education enrollment in a school depresses the percentage tested, but not by a great amount, at least in so far as it can be detected at the school level, which is compounded by the problems of matching two different sources of school data—the number of English Learners tested in May and the English Learner enrollment anywhere from two to eight months earlier.

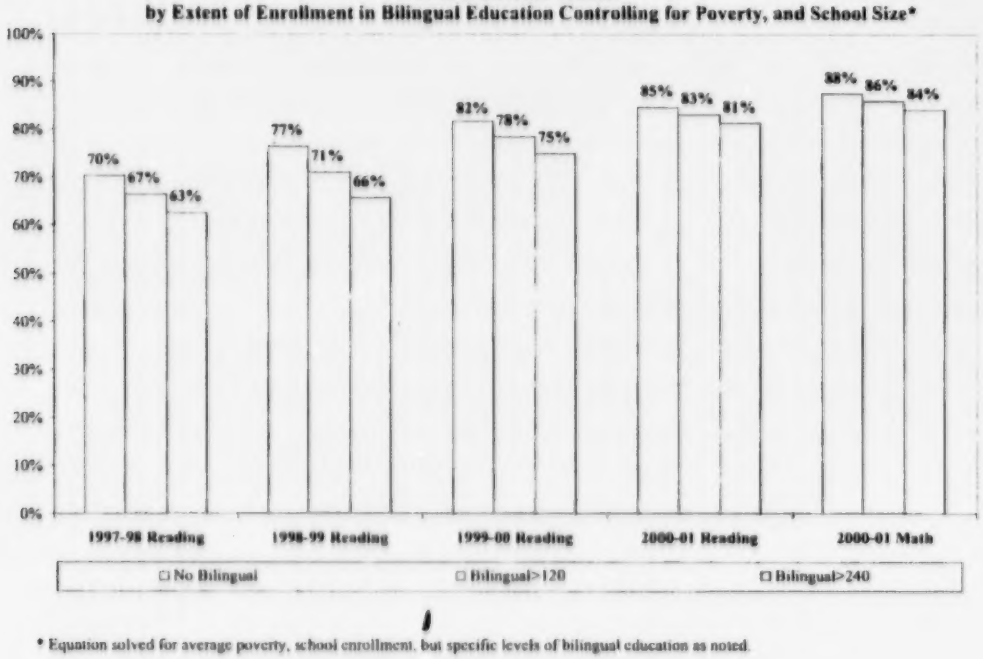
Table 2

Predictors of the Percentage of English Learners Tested in Reading
in California Elementary Schools Enrolling English Learners in Tested Grades,
1997-98, 1998-99, 1999-00, 2000-01 and Math in 2000-01

	READING												MATH			
	1997-98				1998-99				1999-00				2000-01				2000-01			
Dependent Variable=	Mean	b	Beta	Signif. Level	Mean	b	Beta	Signif. Level	Mean	b	Beta	Signif. Level	Mean	b	Beta	Signif. Level	Mean	b	Beta	Signif. Level
% of EL Tested	68				75				81				84				87			
Constant		56.847		0.000 *		62.492		0.000 *		71.765		0.000 *		74.737		0.000 *		77.642		0.000 *
%s. Enrolled in Bil. Ed.	75	-0.031	-0.16	0.000 *	30	-0.045	-0.15	0.000 *	31	-0.030	-0.13	0.000 *	30	-0.014	-0.06	0.000 *	29.9551821	-0.008	-0.03	0.017 *
% on AFDC or Calworks	20	-0.067	-0.04	0.000 *	17	0.047	0.03	0.038 *	17	0.094	0.07	0.000 *	14	0.154	0.11	0.000 *	14	0.150	0.11	0.000 *
Total School Enrollment	617	0.034	0.23	0.000 *	615	0.022	0.23	0.000 *	621	0.014	0.18	0.000 *	616	0.013	0.18	0.000 *	615.639656	0.011	0.17	0.000 *
Adjusted r2		0.038				0.060				0.042059				0.046081648				0.042		
N		4,840				4,905				4,862				4,998				4,998		

* Statistically significant at .05 or better.

Figure 6
Percentage of Elementary English Learners Tested in Reading 1997-98 through 2000-01 and in Math 200 01 in California Schools
by Extent of Enrollment in Bilingual Education Controlling for Poverty, and School Size*



* Equation solved for average poverty, school enrollment, but specific levels of bilingual education as noted.

Individual student test rate data by program from California and the U.S. show more striking disparities in testing rates. Bali (2000) has obtained such data for Pasadena Unified in southern California. As shown on the left side of Figure 7, in 1997-98, only 50 percent of English Learners in bilingual education were tested, but 89 percent of those in ESL were tested.

The next two bars to the right of Pasadena show the testing rates for the Los Angeles Unified School District in 1996-97. The school district's report (Los Angeles Unified, 1998) showed English Learners who were in bilingual education for five years outscored English Learners in all-English classes on the Stanford 9. However, only 61 percent of the students in the bilingual program were thought to know enough English after five years to be able to take the test, but 97 percent of the students in the English language program took the test. This 37 point differential is very close to the 39 point differential Bali found in Pasadena.

Similar disparities can be found in the Ramirez, et al. (1991) nationwide study of more than 1,000 children in nine school districts across 5 grades which are the four bars on the right side of Figure 7. Eighty-nine percent of the structured immersion students were tested in K-1, but only 61 percent of the early exit bilingual education students were tested. In grades 1-3, 42 percent of the structured immersion students were tested, but only 29 percent of the early exit bilingual education students were tested. The Ramirez study found no difference between the

two programs, but this underestimates the benefit of immersion and overestimates the benefit of bilingual education since far fewer students were tested in the bilingual program.

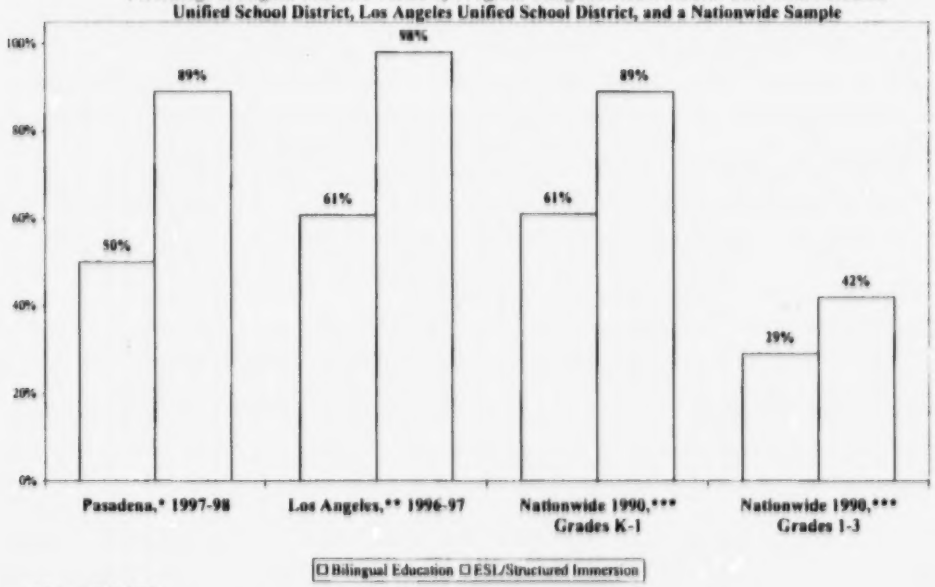
To summarize, comparisons between schools and school districts with different testing rates are comparisons between apples and oranges. Moreover, with aggregate data, gains from educational reforms can be completely obscured by increases in the testing rates of the target population over time as has occurred since Proposition 227.

The Effect of Proposition 227 on Achievement

Determining the effect of Proposition 227 on the academic achievement of English Learners using the CDE school achievement data is limited by the fact that only the school achievement data is broken down by program and that is only reliable for the most recent year, 2000-01. Therefore, there is currently no valid trend data for achievement by program.

The regular STAR data files containing achievement (http://star.cde.ca.gov) and the program and socioeconomic status data files (www.cde.ca.gov/demographics) have information going back to the 1997-98 school year, but none of it is available by program. Therefore, one can only estimate the impact on the English Learner achievement of a school having greater or fewer students with a specific characteristic (e.g., bilingual education enrollment, poverty eligibility) or other school characteristics.

Figure 7
Percentage of English Learners Tested by Program Using Individual Student Data from Pasadena Unified School District, Los Angeles Unified School District, and a Nationwide Sample



* Source: Bali, 2000.
** Source: LAUSD, 1998.
*** Source: Ramirez, et al., 1991.

Figure 8 analyzes only the elementary schools which prior to Proposition 227 had significant bilingual education programs—more than 120 students enrolled—to determine the impact of eliminating or keeping their programs. Schools that eliminated their bilingual education program had a 10 point gain in reading, but those that kept their bilingual education program in some form only had a 6 point gain.

This may underestimate the impact of eliminating bilingual education since even the schools that kept more than 120 students in bilingual education still had a large reduction in bilingual education from an average 330 students enrolled (68 percent of their English Learners) in 1997-98 to an average 260 students enrolled (55 percent of their English Learners) in 2000-01. Moreover, even if a school maintained a scaled down bilingual education program, interviews suggest that in many schools it is no longer the same program—more English is being used and students are being transitioned faster since there are fewer bilingual education programs at the upper grades. Figure 8 also indicates that the testing rates for the schools that kept a bilingual education program were four points lower in reading and three points lower in math, an advantage that will serve to inflate test scores for the bilingual education schools, all other things being equal.

Table 3 shows an OLS regression equation predicting the effect of the percentage of English Learners enrolled in bilingual education on an elementary school's 2001 reading and math test scores controlling for important characteristics that are known to be significantly related to achievement—their 1998 pre-Proposition test score and their percentage poor in 2001 (on Calworks, the state poverty program). The percentage of English Learners tested in reading or math was not significant at the school level and is not shown.[25]

As shown in the column labeled "mean," the test scores are low—19 in reading and 28 in math in 1998 and 27 in reading and 41 in math in 2001—but that is because they are supposed to be low—an English Learner is a student who scores low in English. As discussed above, there is a ceiling on how much progress can be made in English Learner test scores since their scores cannot go much above a certain level in English (usually the 36th to 50th percentile), before they no longer appear in the English Learner category. Moreover, the eight point gain in reading and the 13 point gain in math are particularly impressive because the testing rate has increased by 15 points over this time period.

The percentage enrolled in bilingual education is significantly and negatively related to a school's test score in both reading and math. Figure 9 solves the equations in Table 2 and shows a school's predicted test score if 100, 50, and 0 percent of its English Learners were enrolled in bilingual education in 2001. As shown, an elementary school's reading score is increased by six points in reading and three points in math if they have no bilingual education enrollment compared to a school that has all its English Learners enrolled in bilingual education.

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[25] Unfortunately, it is not a good control variable at the school level. On the one hand, schools with lower testing rates enjoy an unfair advantage in that the lowest scoring students are not being tested. On the other hand, schools with lower testing rates have lower scores to begin with so the sign for the testing rate is positive—that is, a higher test rate is associated with higher test scores, although it is not statistically significant and has no effect on other variables.

As noted above, this analysis may not show the true effect on achievement of bilingual education, or its inverse, English language instruction, since it appears that bilingual education in California has been changed by Proposition 227—-more English is being used and students are transitioned earlier—and because all but a handful of schools reduced their bilingual education enrollment even if they did not eliminate it entirely. Trying to isolate the true effect of a program that is no longer the same, or the true effect of sheltered English immersion when it also had an effect on other programs, is a difficult task even at the individual level and it is even more difficult at the school level.

Figure 8
English Learner Test Score Gains from 1998 to 2001 in Reading and Math in California Elementary Scho with More than 120 Students Enrolled in Bilingual Education in 1998

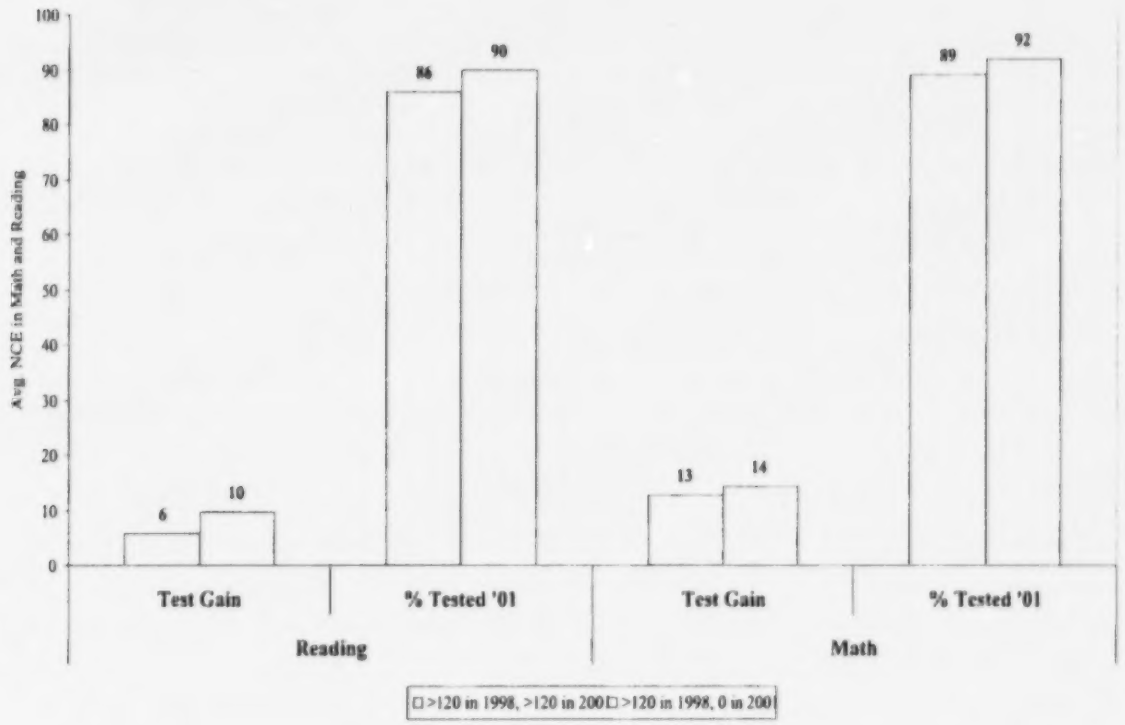


Table 3
The Effect of Bilingual Education on 2001 Achievement in California Elementary Schools

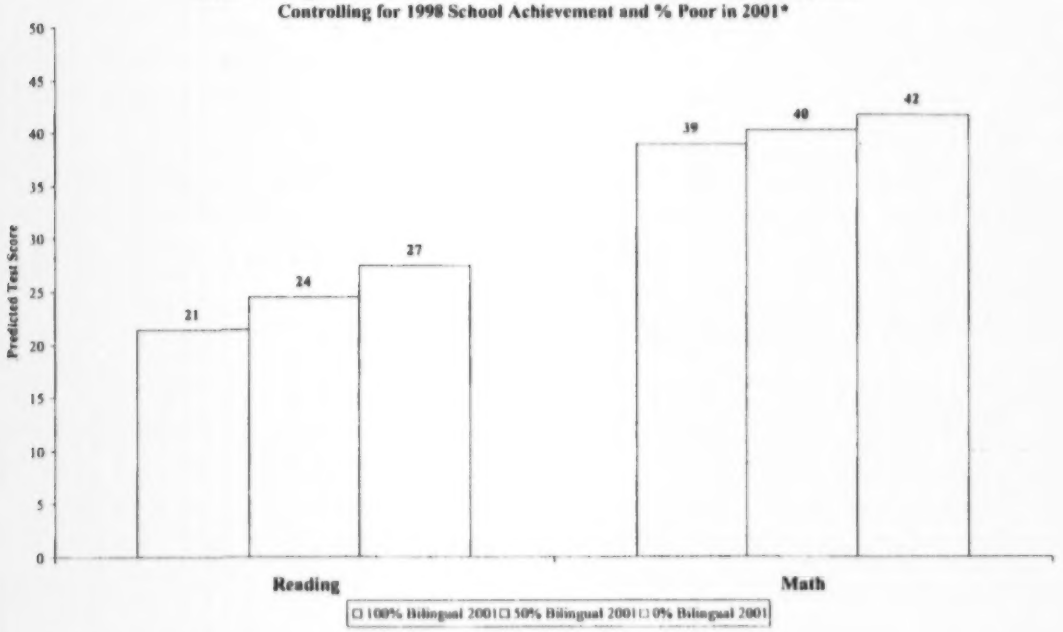
READING					MATH				
	Mean	b	Beta	Sig.		Mean	b	Beta	Sig.
Reading Score 2001	27				Math Score 2001	41			
(Constant)		14.992		0.000 *	Constant		24.275		0.000 *
Reading Score 1998	19	0.737	0.69	0.000 *	Math Score 1998	28	0.720	0.69	0.000 *
% Bilingual Ed. 2001	13	-0.060	-0.13	0.000 *	% Bilingual Ed. 2001	13	-0.028	-0.05	0.000 *
% Poor 2001	17	-0.090	-0.11	0.000 *	% Poor 2001	17	-0.142	-0.14	0.000 *
Adj. R^2		0.599					0.579		
N		2,755					2,811		

* Statistically significant at .05 or better.

(Constant)		14.992	14.992		Constant		24.275	24.275
Reading Score 1998	19	0.737	13.992505		Math Score 1998	28	0.720	19.8362339
% Bilingual Ed. 2001	100	-0.060	-5.9809896		% Bilingual Ed. 2001	100	-0.028	-2.75903168
% Poor 2001	17	-0.090	-1.57456991		% Poor 2001	17	-0.142	-2.45436633
			21.429					38.897

	Reading	Math
100% Bilingual 2001	21	39
50% Bilingual 2001	24	40
0% Bilingual 2001	27	42

Figure 9
Effect of Bilingual Education on 2001 Achievement in California Elementary Scho
Controlling for 1998 School Achievement and % Poor in 2001*



* Equation solved for average % poor and average 1998 school achievement, but specific levels of bilingual education as noted.

Individual student data still suffers from the testing rate bias favoring bilingual education, but at least it is possible to determine the program the student is enrolled in. Bali (2000; 2001) has analyzed the achievement of individual English Learners in the Pasadena Unified School District using data provided by them. In 1998, 53 percent of Pasadena's English Learners were enrolled in bilingual education. After Proposition 227, less than two percent of English Learners were enrolled in bilingual education. Bali used the Heckman selection method[26] to control for the selection bias produced by the lower testing rate for the bilingual education program in 1997-98.

The effect of being in a bilingual education program in 1997-98 is negative and statistically significant, but the magnitude is only 2.4 points in reading and a half point in math. The effect of putting these same English Learners in a structured immersion classroom the next year was to eliminate the small gap between English Learners who had been in bilingual education and those not in bilingual education.

Bali also looked at the *gains* made by the two groups of students using the same technique. The English Learners who had formerly been in bilingual education who were now in structured immersion made gains of 4.15 points in reading compared to gains of only 1.8 for the students who had been in English previously. There was no difference in the gains of the two groups in math. In short, both analyses suggest that putting English Learners who had been in bilingual education into structured immersion increased their reading scores by about two points and their math scores by about a half point or less.

These positive effects for structured immersion may be statistically significant, but they are small. The Heckman selection model does not seem to overcome the bias introduced by the huge differential in test taking between the two programs. Indeed, Bali found that OLS regression produced outcomes that were only about a half point different from the Heckman selection model in reading and 2/10ths of a point difference in math. The problem with the Heckman selection model is that it requires finding predictors that are correlated with the testing bias, but not with the outcome and that is almost impossible to accomplish.

Bali's findings are not that different from what those obtained in this analysis of school achievement. She found a 2 _ point negative for bilingual education in reading and no effect in math for English Learners in one district. This study found a six point negative effect in reading and a three point negative effect in math if all English Learners in a school are enrolled in bilingual education rather than none.

Summary

Proposition 227 was implemented in California in 1998-99. The number of English Learners enrolled in bilingual education declined by 240,439 students from 409,879 to 169,440 in the first year. It has remained close to that level at 169, 929 in 1999-00, and 167, 163 in 2000-01. The percentage enrolled declined 17 points from 29 to 12 percent and has remained at 11 percent in 1999-00 and 2000-01. Similar declines were seen in the largest school districts

[26] See Heckman, 1979.

in California, although they had an increase in more than 8,000 students at all grade levels and 10,000 students at the elementary level in bilingual education in 1999-00. The slight decline in 2000-01 only somewhat offset the increase in bilingual education in 1999-00. Nevertheless, although 11 percent of English Learners (overwhelmingly Spanish speaking)[27] are still enrolled in bilingual education, 56 percent of the schools, and about 47 percent of the districts in California completely eliminated their bilingual education programs and almost all of them had a large reduction in bilingual education. Moreover, the remaining programs are using more English and transitioning students earlier.

Proposition 227 has had a positive effect on the academic achievement of English Learners, but it is not going to turn them into high scoring students. First, bilingual education may be the least effective way of teaching English Learners, but it was not a disaster nor the primary cause of the low achievement of English Learners. Second, some schools and school districts are subverting the intent of Proposition 227 and assigning Spanish speaking English Learners to classrooms taught almost entirely in Spanish in the first 30 days of school. The San Diego sheltered English immersion program, for example, teaches Spanish literacy and thus appears to be closer to bilingual education than to sheltered English immersion. In short, many bilingual education programs are using so much English they resemble sheltered English immersion and some sheltered English immersion programs are using so much Spanish they resemble bilingual education. Third, the redesignation standards are still as illogical as they were before Proposition 227. The new statewide CELDT will further muddy the waters, at least for several years, since for some school districts it will be easier than their old test and for others, it will be harder. Redesignation rates will not be comparable pre and post CELDT.

As it stands now, a major impact of Proposition 227 that can be determined with some certainty is that it came close to eliminating bilingual education in California after 26 years of support by the California Department of Education. The achievement impact on English Learners that can be determined with the current data seems small—about six points in reading and three points in math—but if Proposition 227 also changed bilingual education, its impact may be greater than we are able to determine at this point in time.

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[27] There are still some Chinese "bilingual education" programs in San Francisco since San Francisco is not complying with Proposition 227. As noted above, however, these programs are in reality sheltered English immersion.

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About the Author

Christine H. Rossell is a professor of political science at Boston University and holds the Maxwell Chair in United States Citizenship. Her areas of specialization in education include school desegregation and bilingual education policy. She has participated with expert testimony in almost fifty school desegregation and bilingual education cases and has helped design and defend eleven voluntary desegregation plans. Published works include *Bilingual Education in Massachusetts: The Emperor Has No Clothes* (1996) and *School Desegregation in the 21st Century* (2002). Prof. Rossell received her Ph.D. from the University of Southern California, her M.A. from California State University, Northridge, and her B.A. from the University of California at Los Angeles.

Appendix 1

Interpretations of Proposition 227 Requirement for Structured Immersion in Los Angeles, San Diego, and San Francisco 1998-1999

PROPOSITION 227	LOS ANGELES	SAN DIEGO	SAN FRANCISCO
Sheltered English immersion" or "**structured English immersion**" means an English language acquisition process for young children in which *nearly all* classroom instruction is in English, but with the curriculum and presentation designed for children who are learning the language.	**Model B Structured English Immersion:** This model provides instruction *primarily* in English. Students will be taught English language skills in English. Students will be taught subjects using special methods in English combined with primary language instructional support.	**English Language Immersion:** "Because true language immersion is an *additive* program where students do not lose their proficiency in their native language, students will be instructed through their native language for a maximum of 30% of the school day. One *half of the literacy period will be dedicated to literacy and other activities taught through the native language"* …**NOTE:** Schools with bilingual programs previously should implement this model during the 30 day period.	**English Only:** English Language Development and content classes taught using ESL and SDAIE methodologies. Exceeds criteria for Code 300 Et Seq. (Structured English Immersion).
	Model A: Structured English Immersion: This model provides instruction in English. Students will be taught English language skills in English. Students will be taught subjects using special methods in English, with primary language used for clarification, as needed.	**Structured English Immersion:** …"instructed through English language immersion for all, or almost all, of the school day." **NOTE:** Schools that have English learners of mixed language groups and that have previously implemented *Sheltered English programs* should implement this model.	
		SECONDARY SCHOOLS can meet the same requirements if the classes in which the English learner is enrolled *do not exceed two classes in the language other than English.*	

Appendix 2
Interpretations of Informed Consent and Circumstances Justifying Parental Waiver of Proposition 227 in Los Angeles, San Diego, and San Francisco, 1998-99

PROP. 227	LOS ANGELES	SAN DIEGO	SAN FRANCISCO
INFORMED CONSENT			
Parents or legal guardian [must] *personally visit* the school to apply for the waiver..	Parents must visit school to sign waiver. Hardship cases may mail form.	If it is a hardship to visit school, parents can mail in a parent hardship form.	Parents do not have to visit school.
CIRCUMSTANCES OF CHILD			
(a) Children who already know English…; (b) Older children…; or (c) Children with special needs: the child already has been placed for a period of *not less than thirty days* during that school year *in an English language classroom* and it is subsequently the informed belief of the school principal and educational staff that the child has such special physical, emotional, psychological, or educational needs that an alternate course of educational study would be better suited to the child's overall educational development. A written description of these special needs must be provided.	30 days in Model A, Model B, or mainstream during which time schools hold parent meetings. Schools recommend bilingual program for some students.	30 days in structured English immersion, English language immersion, or mainstream during which time schools hold parent meetings. Schools recommend bilingual program for some students and parents visit school to sign waiver.	It is not necessary to place an LEP child in an English language classroom for 30 days before assigning to bilingual education because the "Lau Consent Decree orders bilingual education." Assignment to bilingual education, however, must be approved by parent in form mailed to district. Choices on the form are types of bilingual education.

Appendix 3

Interpretations of Definition of English Learner and Time Period of Sheltered English Immersion Program in Emergency State Board Regulations (10/98), Los Angeles, San Diego and San Francisco, 1998-99

PROP. 227	STATE BOARD 10/98	LOS ANGELES	SAN DIEGO	SAN FRANCISCO
TIME PERIOD OF SHELTERED ENGLISH IMMERSION PROGRAM				
a temporary transition period *not* normally intended *to exceed one year*… Once English learners have acquired a good working knowledge of English, they shall be transferred to English language mainstream classrooms.	11301(c) An English learner may be re-enrolled in a structured English immersion program not normally intended to exceed one year if the pupil has not achieved a reasonable level of English proficiency as defined in Section 11301(a) unless the parents or guardians of the pupil object to the extended placement	Students who are not able to achieve reasonable fluency (ELD level 5) within one year of structured English immersion will take more time and, with parent consent, will receive *an additional year* of structured English immersion.	Proposition 227 *requires* all English learners to receive "Sheltered English Immersion" *for at least one year*. If the student does not develop a good working knowledge of English by the end of that year, the student, *with yearly parental approval, may continue receiving that instruction*.	…an intensive English program *for at least one year*
DEFINITION OF ENGLISH LANGUAGE LEARNER				
"English learner" means a child who does not speak English or whose native language is not English and who is not currently able to perform ordinary classroom work in English, also known as a Limited English Proficiency or LEP child	…as measured by any of the state-designated assessments approved by the California Department of Education, or any locally developed assessments.	NEP or LEP scores on PRE-LAS, LAS or BINL; remain LEP if below 36th percentile on a standardized norm-referenced test of reading and language; or NEP or LEP on LAS-O		NEP or LEP score on LAS I English (oral) proficiency test and LAS Literacy; remain LEP if below 36th percentile on CTBS in reading and math; below C on report card in core courses; below advanced or transitional on LALAR; below level 3 on writing assessment

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